TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1991

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS

EDWARD R. ROYBAL, California, ***Chairman***

DANIEL K. AKAKA, Hawaii
STENY H. HOYER, Maryland
BILL ALEXANDER, Arkansas
JOSEPH D. EARLY, Massachusetts
MARTIN OLAV SABO, Minnesota

JOE SKEEN, New Mexico
BILL LOWERY, California
FRANK R. WOLF, Virginia

AUBREY A. GUNNELS and C. WILLIAM SMITH, *Staff Assistants*

PART 1

	Page
Committee for Purchase From Blind and Other Severely Handicapped	1
The Advisory Commission on Intergovernmental Relations	569
Administrative Conference of the United States	79
Advisory Committee on Federal Pay	23
United States Tax Court	161
National Archives and Records Administration	193
Federal Labor Relations Authority	273
Government Ethics	635
U.S. Merit Systems Protection Board	409
Office of the Special Counsel	353
Federal Election Commission	503
Office of Personnel Management	653

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
28-049 O WASHINGTON : 1990

H181-64

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON APPROPRIATIONS

JAMIE L. WHITTEN, Mississippi, *Chairman*

WILLIAM H. NATCHER, Kentucky
NEAL SMITH, Iowa
SIDNEY R. YATES, Illinois
DAVID R. OBEY, Wisconsin
EDWARD R. ROYBAL, California
LOUIS STOKES, Ohio
TOM BEVILL, Alabama
BILL ALEXANDER, Arkansas
JOHN P. MURTHA, Pennsylvania
BOB TRAXLER, Michigan
JOSEPH D. EARLY, Massachusetts
CHARLES WILSON, Texas
LINDY (MRS. HALE) BOGGS, Louisiana
NORMAN D. DICKS, Washington
MATTHEW F. McHUGH, New York
WILLIAM LEHMAN, Florida
MARTIN OLAV SABO, Minnesota
JULIAN C. DIXON, California
VIC FAZIO, California
W. G. (BILL) HEFNER, North Carolina
LES AuCOIN, Oregon
DANIEL K. AKAKA, Hawaii
WES WATKINS, Oklahoma
WILLIAM H. GRAY III, Pennsylvania
BERNARD J. DWYER, New Jersey
STENY H. HOYER, Maryland
BOB CARR, Michigan
ROBERT J. MRAZEK, New York
RICHARD J. DURBIN, Illinois
RONALD D. COLEMAN, Texas
ALAN B. MOLLOHAN, West Virginia
LINDSAY THOMAS, Georgia
CHESTER G. ATKINS, Massachusetts
JIM CHAPMAN, Texas

SILVIO O. CONTE, Massachusetts
JOSEPH M. McDADE, Pennsylvania
JOHN T. MYERS, Indiana
CLARENCE E. MILLER, Ohio
LAWRENCE COUGHLIN, Pennsylvania
C. W. BILL YOUNG, Florida
RALPH REGULA, Ohio
VIRGINIA SMITH, Nebraska
CARL D. PURSELL, Michigan
MICKEY EDWARDS, Oklahoma
BOB LIVINGSTON, Louisiana
BILL GREEN, New York
JERRY LEWIS, California
JOHN EDWARD PORTER, Illinois
HAROLD ROGERS, Kentucky
JOE SKEEN, New Mexico
FRANK R. WOLF, Virginia
BILL LOWERY, California
VIN WEBER, Minnesota
TOM DeLAY, Texas
JIM KOLBE, Arizona
DEAN A. GALLO, New Jersey

FREDERICK G. MOHRMAN, *Clerk and Staff Director*

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1991

WEDNESDAY, MARCH 14, 1990.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

WITNESSES

JOYCE C. YOUNG, VICE-CHAIR

BEVERLY L. MILKMAN, EXECUTIVE DIRECTOR

Mr. ROYBAL. The committee will now hear from the Committee for Purchase from the Blind and other Severely Handicapped.

Ms. Young and Ms. Milkman, the committee would like to welcome you, ask you to proceed in any manner that you may desire.

Ms. YOUNG. Thank you, Mr. Chairman. I am Joyce Young. What I would like to do is request permission to submit our prepared remarks and give you a summary if I may.

Mr. ROYBAL. Without objection, it will be ordered.

Ms. YOUNG. Thank you.

[The information follows:]

MRS. JOYCE C. YOUNG, VICE-CHAIR
COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Mr. Chairman, we are pleased to appear here today to present the appropriations request of the Committee for Purchase from the Blind and Other Severely Handicapped for Fiscal Year 1991.

Background

This Committee was created by the Javits-Wagner-O'Day (JWOD) Act (Public Law 92-28) in 1971, and is composed of 15 members appointed by the President. As mandated by the statute, 11 of the 15 are Federal employees representing various agencies, while the other four members are knowledgeable about the employment problems of persons with blindness and other severe disabilities. These four, whom the statute prohibits from being Federal employees, may be employees of state and local governments or private citizens. They are appointed for five-year terms. Government members' terms are determined by the leadership of their respective agencies. The Committee normally meets once a month, but members also devote at least some time each week to Committee business, much of which is conducted through formal correspondence.

The long-range goals of the Committee are to increase employment opportunities for persons with severe disabilities and, whenever possible, to prepare them to engage in normal competitive employment. Our primary means of achieving these goals is by directing Federal Government procurement of selected commodities and services to workshops serving such individuals. As stipulated by the JWOD Act, the Committee determines which products and services purchased by the Federal Government are suitable for provision by qualified workshops. These items are published annually in our Procurement List, which we distribute to contracting agencies throughout the country. We also establish the prices which must be paid for the commodities and services included on the Procurement List.

The Committee is responsible for other functions as well. These include educating Federal officials about the JWOD Program and soliciting their support. In addition, we are responsible for monitoring the performance of participating workshops and providing guidance to workshops and the two central nonprofit agencies authorized to help them take part in our program. Those agencies are the National Industries for the Blind and the National Industries for the Severely Handicapped.

To assist in the implementation of the program, the Committee employs a full-time staff of 14 persons. The staff is responsible for developing recommendations on items proposed for addition to the Procurement List and other appropriate matters for the consideration of the Committee. Staff activities include assisting in the establishment and revision of fair market prices for commodities and services; verifying the qualifications and monitoring the performance of workshops; and serving as a link between the workshops, the central non-profit agencies, and Federal Government units in expanding the program and resolving problems.

In addition, the staff handles all the administrative functions for the Committee. These include developing policies and procedures, initiating and responding to correspondence, preparing the Committee's budget, and performing the numerous other functions required of an independent Federal agency.

FY 1990 Budget

When Committee representatives appeared before you last year, they reported that it was not a time for "business as usual." They cited changes in Federal procurement practices, a DOD spending moratorium, and the continuing employment and training needs of persons with severe disabilities as reasons for this conclusion.

At that time, the Administration was requesting additional resources for FY 1990 to make some of the modifications considered essential to the continued success of the Program. These included monies for program evaluation and education purposes and an increase in travel funds. You and your Senate counterparts responded positively to the request and provided additional resources for research and program promotion, as well as for personnel. The result was a fiscal year 1990 appropriation of $1,062,000, of which $13,000 was sequestered, resulting in a final figure of $1,049,000.

FY 1989 Record

Responding to the obvious challenges confronting it, the Committee and the two central nonprofit agencies which help workshops participate in the Program pressed hard in Fiscal Year 1989 to assure the continued success of the Program. A record number of items were added to the Committee's Program, and sales of items already in the Program reached an all-time high of $354 million. This represented an increase of $23 million or 7 percent over the previous year.

More importantly, the number of individuals employed under the JWOD Program increased to almost 19,000, an increase of over 2,000 persons or almost 12 percent. Regrettably, the actual number of hours worked by such individuals did not increase as significantly, and in the blind community actually decreased. Total wages paid these individuals increased to $61.7 million, an increase of 5 percent, while the average hourly wage increased from $4.50 to $4.56.

It should be noted that the increases in the various Program categories are in large part attributable to increases in sales of services. Every year, for example, more Federal buildings are cleaned by persons with severe disabilities and more shelves in military commissaries are stocked by such individuals. Sales of JWOD commodities also increased over the past year, but as expected given the changes in Federal product procurement practices and other factors, the increase was minimal.

The lack of growth in the commodities sector has particularly detrimental impacts upon employment opportunities for blind workers, since workshops serving the blind are almost exclusively involved in commodity production. It also, however, means fewer opportunities for the thousands of persons with other severe disabilities who are unemployed or underemployed and anxious to obtain work.

The number of work centers participating in the JWOD Program continued to increase during Fiscal Year 1989, reflecting the substantial employment needs of persons with severe disabilities. As of September 30, 1989, 377 workshops were providing services and/or commodities to the Federal Government under the Program, an increase of 32 or 10 percent. Thirty-four work centers entered the Program, and two dropped out. Of the 34 new entrants, 32 were organizations serving persons with "other severe disabilities."

During the fiscal year, Committee staff conducted on-site reviews of the operations of 24 workshops and 14 satellite operations linked to those work centers. This number is substantially below that for previous years because of staff illness and turnover and a significant increase in the amount of time spent on each visit. It should be noted, however, that during Fiscal Year 1989, the Committee began receiving standardized on-site review reports from the two central nonprofit agencies. These, combined with the extra time devoted to each review, resulted in an overall increase in the amount of workshop information available to the Committee.

FY 1991 Request

The appropriation request you are considering today reflects the Committee's continuing effort to hold down the costs of administering a program whose overall growth masks significant current and future challenges. Not the least of these challenges will be adjusting to changes in the Defense Department's procurement needs caused by events not even imagined at the time the Committee's budget was prepared.

The amount sought for Fiscal Year 1991 is $1,160,000, or $111,000 (10 percent) more than the current year appropriation. Of the increase, $93,000 is for personnel costs associated with mandatory pay raises, related benefits, and discretionary promotions and awards. Other components of the increase include an additional $5,000 in travel funds, as well as what appears to be an $8,000 increase for equipment, supplies and materials.

The additional personnel resources do not represent any increase in the Committee's staffing level. Despite the tremendous growth in the JWOD Program over the past decade, the staff has only expanded from 12 to 14 persons. The exceptional productivity and dedication of the staff have made this possible, and the additional personnel resources requested include some funds for recognizing and rewarding their efforts.

With regard to the other increases previously cited, the additional travel funds reflect the continued expansion in the number of work centers which must be visited by Committee staff. The apparent increase in equipment, supplies and materials is misleading, since the fiscal year 1990 figure was artificially low as a result of an unusually high level of expenditures in fiscal year 1989.

Last year for the first time, the Committee requested funds to support studies of program operations and impacts and educate Federal employees about the JWOD Program. You agreed that such efforts were appropriate, and a total of $100,000 was made available during the current fiscal year for this purpose. The pending budget request seeks continued funding for these functions at the $100,000 level. This request recognizes the need to increase the Program's effectiveness in light of reductions in Defense Department expenditures, changes in Federal procurement practices, and continuing technological developments that render obsolete products previously provided under the JWOD Program.

You will be pleased to learn that although the $100,000 for the research and education program was not available until the beginning of the current fiscal year, your approval of the concept permitted the Committee to initiate its education effort toward the end of fiscal year 1989. In addition to a brief video that is used to introduce the JWOD Program to groups of Federal employees, a series of case studies of the JWOD Program experiences of persons who are blind or have other severe disabilities has been undertaken. Other research is in the planning stages, and a poster urging employees to "Buy JWOD," has been developed and is being mailed to Federal offices throughout the country.

In closing, I want to assure you that although the Committee is faced with unprecedented challenges, the members have never been more determined to assure that Americans who are blind or have other severe disabilities benefit from the Javits-Wagner-O'Day Program.

Ms. Young. First of all, I would like to say that, after almost 14 years as a member of the committee, and over 10 years as vice-chair, I am extremely pleased to have the opportunity to be with you.

COMMITTEE LEADERSHIP CHANGE

I would be remiss, however, to not inform you that my presence here reflects a very recent change in leadership of the committee, about which all of us who are members have mixed emotions. Mr. Frank Gearde, Jr., who probably has testified before you, who has served for the past five years as committee chair, resigned his chairmanship just last week. Mr. Gearde has been an extremely influential and dedicated chair, and presided over a period of really increased growth and accomplishments. We will miss his leadership and commitment a great deal.

At the same time, we are delighted that Rear Admiral Daniel McKinnon has agreed to serve as our new committee chair. Admiral McKinnon is also an exceptionally capable and dedicated committee member, and his knowledge of Defense Department procurement issues will be most helpful to the committee.

Admiral McKinnon asked me to express his regrets that he could not be with you today. He had a commitment that was made long before his selection as committee chair last week.

I would also like to introduce our Executive Director, Beverly Milkman, who is with us today.

DESCRIPTION OF JWOD PROGRAM

We would like to start out with just a brief description of the Javits-Wagner-O'Day program and its structure. Our committee is an independent federal agency, composed of 15 persons. Eleven of the 15 are federal employees. The rest of us are private citizens, representing people with severe disabilities. We are all appointed by the President.

The committee's staff is composed of federal employees. The committee's goal is to generate employment and training opportunities for persons who are blind or have other severe disabilities.

These opportunities are expected to lead to competitive employment in the mainstream economy whenever possible. We achieve our goal by encouraging and overseeing federal purchases of commodities and services from workshops employing people with severe disabilities.

By participating in the provision of federal commodities and services, such people gain work experience and skills as well as wages and other fringe benefits. The work centers participating in the program are independent, non-profit, private organizations, or units of state agencies, and are located throughout the country.

JWOD PROGRAM NEEDS

As Mr. Gearde and Ms. Milkman advised you last year, the world of federal procurement is in a state of flux. Changes in procurement policies and practices have forced the committee to examine its internal operations to assure their continued appropriateness in the environment of the 1990s.

Among the needs we identified last year were a greater emphasis on educating federal consumers about the nature and rules of the Javits-Wagner-O'Day program, and on assessing program operations and impacts.

These needs and the high levels of unemployment among people with severe disabilities led the Administration last year to request additional resources for research and education purposes. You responded positively, providing extra funds for these purposes, and an additional staff member. While these resources were not available until October of 1989, the committee was able to initiate some research and promotion efforts prior to that time.

Those efforts are still underway, and we are seeking funds to continue them in Fiscal Year 1991.

FY 1989 PERFORMANCE

Let me step back just a minute and briefly review our Fiscal Year 1989 performance figures, which include the provision of work for almost 19,000 people with severe disabilities. These figures, which are excellent in many respects, reflect both the opportunities and the challenges confronting the JWOD program. In case you are wondering, JWOD is our shorthand for Javits-Wagner-O'Day.

The fact that opportunities exist is demonstrated by the record number of items added to the committee's program in 1989. A total of 165 commodities and services were added with the expectation that they would generate 1,400 jobs for people with severe disabilities.

The opportunities available are also apparent in the significant increases in the services provided to the government under the JWOD program. For example, hardly a month goes by without the addition of a federal building or military building serviced by persons with severe disabilities under our program. During 1989, there was an increase of almost ten percent in the hours worked by people with severe disabilities on service contracts. There was a corresponding increase in wages earned.

The challenges are most evident in the commodities component of the program. While commodity sales went up during 1989, the increase was small, and the amount of work generated by commodity sales actually fell. The lack of growth in commodities has a disproportionately severe impact on the blind, since workshops serving the blind are almost exclusively involved in commodity production.

The challenges are also inescapable when we consider the major changes that are taking place in this nation's military establishment as a result of events in Eastern Europe and other parts of the world. The reductions in military spending will have a significant impact on the JWOD program since the overwhelming majority of our sales are to military customers.

The bottom line is that the committee and the two central nonprofit agencies that work with us—National Industries for the Blind and National Industries for the Severely Handicapped—have our work cut out for us. We must continue to identify new com-

modities and services that can be provided to the government. We must improve our operations and modernize our products whenever we can, and we must continue our efforts to educate federal consumers about the JWOD program.

FY 1991 APPROPRIATION REQUEST

The committee's appropriation is used for administrative purposes. The funds support the work of our staff, and those of us who are non-federal members, as well as research and promotion activities.

Our Fiscal Year 1991 budget request is within the committee's tradition of operating with a minimum number of staff necessary to carry out major responsibilities. The $1,160,000 requested is an increase of $111,000 over our fiscal year 1990 budget. The increase is almost entirely attributable to personnel costs, related benefits, and also promotion and awards.

The funds sought will enable us to continue supporting 14 permanent staffers and carry out a limited research and promotion program. They will also enable us to continue our workshop review process which is essential to assuring that work centers comply with program rules. We believe the funds requested are the minimum amount needed to fulfill our mission and meet the challenge confronting us.

We appreciate your work for this worthwhile program and hope you will be able to respond positively to our request.

Both Ms. Milkman and I are happy to answer any questions that you may have.

Mr. ROYBAL. Thank you, Ms. Young.

One of the things that came to mind as you were talking about your program, which, may I, first of all, compliment because it is an excellent program. But what did come to mind, is the proposed cutback in defense spending. If that were to take place, how would that affect your operation?

EDUCATING FEDERAL CONSUMERS

Ms. YOUNG. It would have a major impact on our operation, and I think that is why we are moving into more promotion efforts. As a matter of fact, I hope we will leave you with our new poster, which says just exactly what we do—"JWOD means jobs." So we do consider Defense cuts a challenge.

Mr. ROYBAL. That poster says, 'JWOD.'

Ms. MILKMAN. That stands for Javits-Wagner-O'Day. That is our acronym, JWOD, which we are trying to get everybody to become familiar with.

Mr. ROYBAL. And that poster will be used where?

Ms. MILKMAN. Throughout the federal government. We are mailing it to agencies everywhere, particularly procuring agencies, of course, because they are the ones that buy JWOD items. But it will be used everywhere to remind people. It will mostly be going to people who already have heard of the program, and it is a reminder to purchase our items.

Ms. YOUNG. Beverly, do you want to add to what I said about Defense cuts?

Ms. Milkman. I think obviously, Mr. Chairman, as Ms. Young has said in her testimony and as we have said in our statement for the record, we are very concerned about the cutback in defense expenditures. At least 70 percent of the sales under this program, and that pretty much translates into the numbers of jobs generated, are from defense sales.

That is why we are in a very aggressive mode of trying to make sure that we add additional items to our program, and trying to educate federal people so they do not go and inadvertently buy things outside of our system.

JWOD SALES

Mr. Roybal. At the present time, what is the total volume of goods and services that are provided to the government?

Ms. Young. Last year, I think the total sales of goods and commodities provided by both National Industries for the Blind and National Industries for the Severely Handicapped was around $354,000,000.

Ms. Milkman. Which is about one percent of the amount that small businesses sold to the federal government, just to give you a framework.

Ms. Young. Yes.

FAIR MARKET PRICES

Mr. Roybal. Now with regard to charges, how much more can a blind and severely handicapped workshop charge for their products above the low bid and still be on the government scale?

Ms. Young. You are talking about the fair market price?

Mr. Roybal. Fair market price.

Ms. Young. I think I will turn that over to Ms. Milkman.

Ms. Milkman. We have a longstanding and fairly complex system of determining what a fair market price is. In the case where there have been bids in the past, our system calls for looking at the median of the bids, we look at the range of bids. We are coming up with a fair market price, not necessarily the best and certainly not the worst, but a fair market price.

The system, which has been in effect for some time, says we will look at the range of bids up to 35 percent above the award price, and you go with the median of those bids, or five percent above the award price, which ever is higher.

JWOD COMMODITIES AND SERVICES

Mr. Roybal. Maybe you should tell the committee the kinds of goods and services that the workshops provide to the government.

Ms. Young. Commodities range from the lining for the Kevlar helmet, pens. We are coming out with a new experimental pencil. Those are primarily produced by the National Industries for the Blind, those work shops.

Services are primarily out of sheltered workshops with the National Industries for the Severely Handicapped, and they can range from grounds maintenance, janitorial services, a whole range of services that have to do with maintenance.

Ms. **Milkman**. Yes. There's a lot of work on the military bases, commissaries. We stock many of the commissaries, and clean them. That has proven to be a very good item.

PARTICIPATING WORKSHOPS

Mr. **Roybal**. I am interested in your training program. How many workshops participate in your program, nationwide, and how many people do they train each year?

Ms. **Young**. There are a lot of answers to that. I will let Beverly give one. Go ahead.

Ms. **Milkman**. This program is growing tremendously, particularly in the area of workshops serving people with severe disabilities, other than the blindness. As of the end of last year, I think we had 378 workshops participating in the program. Since then, we are almost at 400, so there is a constant increase.

These are, as Vice-Chair Young said earlier, they are independent, mostly non-profit organizations. There are a few state agencies involved, too, and their Boards of Directors control what their policies and procedures are. Again, they do have to comply with our rules to participate in our program, but what they do varies tremendously, depending on the type of agency. Some of them are what I would call a full service agency.

They take people who are, for the first time interested in venturing outside their homes, or outside some sort of an institutional facility, and they provide them all kinds of training with regard to jobs, with regard to getting up in the morning, with regard to dressing themselves, with regard to feeding themselves. Some of the agencies do those kinds of things.

Other agencies are simply there to provide employment, and when they provide those employment services to people with disabilities, they do train them for the jobs in question. They must do that; that is what they are there for.

Mr. **Roybal**. Mr. Skeen?

FY 1990 AND 1991 BUDGETS

Mr. **Skeen**. Thank you, Mr. Chairman. I apologize for not being able to stay. I had to go and make another commitment and get back, so it was not for lack of interest. I am sorry I missed your opening testimony.

Let's talk about, last year the committee provided with funds for one additional FTE and $200,000 above your requested amount. That, unfortunately, was eroded by sequestration, I am sure.

Ms. **Milkman**. But not tremendously.

Mr. **Skeen**. But not tremendously.

Ms. **Milkman**. It was very helpful.

Mr. **Skeen**. This year you have requested an increase of $100,000, about 10.6 percent. Would you give us some idea of how this would be put to use, and indicate what you requested from OMB at the outset?

Ms. **Milkman**. The request that we made to OMB at the outset was very similar to what you see before you.

Mr. **Skeen**. So it was not altered too much in the hearing process?

Ms. **Milkman**. It was altered somewhat, but I would say not significantly. In fact, as I think we indicated in our prepared statement last year, we came to you requesting a certain amount of extra money. You added onto that, as you noted. This year, OMB basically took what you had given last year.

Mr. **Skeen**. Last year.

Ms. **Milkman**. For Fiscal Year 1990.

Mr. **Skeen**. And built your request on that?

Ms. **Milkman**. Yes. So that is very helpful, and we are very pleased with that. So it really means that we will be able to continue our education and research program, and we will be able to retain the additional staff person. So we have 14 staff authorized now.

Mr. **Skeen**. So you have 14 people now?

Ms. **Milkman**. Yes. Or we will have when we process the paperwork for a fourteenth staff member.

Mr. **Skeen**. You will. That is what you intend doing with the increases, expand your FTEs?

Ms. **Milkman**. Yes.

Mr. **Skeen**. As you requested last year.

PROMOTION OF PERSONS WITH DISABILITIES

As we understand it, the federal agencies are required to buy certain products from qualified non-profit suppliers, and they're called sheltered workshops, and the policy is intended to promote employment for the blind, the severely handicapped, and so forth. And most of these jobs are noted to apply to industrial assemblies or packaging.

There has been a lot of criticism and a lot of questions about the fact that there are not more handicapped individuals in managerial positions. Can you give me some idea? Has there been some concern about moving handicapped people into these managerial positions?

Ms. **Young**. The committee has been concerned about this for the last two or three years, and, as a result, both National Industries for the Blind and National Industries for the Severely Handicapped have tracked the people that they have been able to either promote within the agency or move into competitive employment outside of the agency. I would say just under 10 percent of the people in these sheltered workshop programs have been able to be promoted or move outside into competitive employment.

Considering the fact that many of the people that are employed are multiply handicapped, we feel that is a real achievement.

Mr. **Skeen**. That is a significant percentage then.

Ms. **Young**. Yes. It really is. We have seen that figure just since both NIB and NISH have begun to track it. We have seen that percentage go up, because they are aware we are concerned about it.

Mr. **Skeen**. I think that is a good part of your response, to make them aware that you are.

Ms. **Young**. Yes. We consider that an important part of our oversight responsibility.

Mr. **Skeen**. We do, too, and I appreciate your efforts.

ACCREDITATION AGENCIES

There has been some concern in New Mexico regarding accreditation agencies that are set up for oversight of handicapped educational institutions, working facilities, and workshops, and things of that kind. Would you give us some discussion as to what the process is? How stringent is the oversight on these accreditation agencies?

Ms. YOUNG. I will let you do that one, because it varies from state to state.

Mr. SKEEN. There are several national accreditation agencies, and we are having a little fire storm over how significant they are, and I want to know who is in charge of oversight and how stringent it is.

Ms. MILKMAN. With regard to the National Accreditation Agencies, there are two or three of those. There's the National Accreditation Council, which is an agency that accredits blind work centers and schools.

Mr. SKEEN. That's NAC?

Ms. MILKMAN. That's NAC. And that is the one, I think, there is the discussion over.

Mr. SKEEN. Yes.

Ms. MILKMAN. There is also CARF, which is the Commission on Accreditation of Rehabilitation Facilities.

Mr. SKEEN. I have to get all the acronyms down.

Ms. MILKMAN. Yes. All I know is the acronym.

Mr. SKEEN. NAC and CARF.

Ms. MILKMAN. NAC and CARF are the two big ones, and NAC is the one that there has been, as you say, a fire storm over during the past year.

The committee does not require accreditation of work centers to participate in this program. The committee's position is that it is responsible for overseeing those aspects of the organizations' operations that are relevant to participation in Javits-Wagner-O'Day Act. That if a work center wants to become accredited by NAC, or CARF, RAF, or whatever, that is up to the local board of directors, and that is their responsibility.

The committee has reiterated that position again this year, just within the last couple of months. I sent a letter to the blind workshops because that's the NAC issue, indicating—again, not saying that it was a terrible thing or a good thing—simply saying that this was not something we were requiring and that it was something that the board of directors really should look at if they wanted to do it.

Mr. SKEEN. I guess the reason we ask you these questions is you are in close proximity to the problem, and I am sure that you are aware of what the problems are.

Ms. MILKMAN. Very much.

Mr. SKEEN. Our concern is that you have agencies, such as this, who crop up primarily for one purpose and one purpose only. They're money-making entities because they give their stamp of approval and so forth, there is no regulation on it. Anybody can form one of these organizations and say that they are accreditation groups, and float the thing.

Of course, we are rifled with those kinds of situations throughout the United States because we are the craziest people in the world for joining something. There is a huge amount of money to be made, but, in this case, in the case of handicapped people, I think we ought to go the extra step of saying, well, who is looking into these?

Ms. Milkman. The Department of Education does have some responsibilities in this regard.

Mr. Skeen. The Department of Education does?

Ms. Milkman. Yes. And they have looked at NAC, and they have looked at CARF, and they—I have forgotten the term, but they have, in a sense, given them the Good Housekeeping seal of approval. At the same time, they do not require that agencies they give money to be accredited. But they do look at accredited agencies, which do come before them periodically and say what they are doing and what procedures they are following.

I would just say that—again, I am not an expert on this, but I know more about it than I wish I did, and I certainly know more about it than I did a year ago—but, in the case of NAC, I think there are good people involved in NAC, there are well-intended people, and I think that many of the things that they do are very helpful. Could it be improved? Yes, it could be, and I understand that they are working on that now.

COMMITTEE POLICY ON ACCREDITATION

The committee, as I said, has is no intention of requiring NAC accreditation because we know good work centers that are not NAC accredited and vice versa.

Mr. Skeen. This is beyond what your mission is.

Ms. Milkman. It is not part of our mission.

Mr. Skeen. It is not part of your mission.

Ms. Milkman. No.

Mr. Skeen. Well, that is what I am trying to get at. I appreciate you educating me is to what is the situation, because we are getting a lot of complaints.

Ms. Milkman. Yes. Well, there are, in the blind community, and you are probably aware of this, there are at least two different camps, I would say, and this case, one of the camps is opposed to NAC, and the other one is supportive of it.

Mr. Skeen. Yes.

Ms. Milkman. And we are sort of in the middle, and we are trying to be objective and professional.

Mr. Skeen. We are in the same position because I have the School for the Visually Handicapped in my district, and it is a very important institution and they do great work. Some of the people who are on board, are visually handicapped themselves, and consider their accreditation under NAC, a total impossibility. They don't want it, and so they are urging them to drop the accreditation.

The institution does not want to drop the accreditation because it says that that causes us to be blighted, and we are an outstanding institution. Then the folks that are advising them, say, well, you don't need it anyway because it's a laughingstock, or this, that, and the other.

Ms. Milkman. Right.

Mr. Skeen. We are caught in this, so I am looking for information.

Ms. Milkman. Yes. I would just say from our staff's looking into it, which was not, by any means, an indepth analysis—with 14 people, and we have had tremendous growth, we just cannot do everything.

Mr. Skeen. You cannot become a police force.

Ms. Milkman. I would say that I was satisfied that NAC is not a laughingstock, that it is not a total waste of time. I was definitely satisfied with that.

Mr. Skeen. I find that many people who are interested in handicapped problems and those that are handicapped are very severe critics at times.

Ms. Milkman. And that is not necessarily inappropriate.

Mr. Skeen. Which is maybe good, bad, or indifferent, but I will tell you one thing, they get your attention.

Ms. Milkman. That's right. Yes.

Mr. Skeen. I appreciate that. Thank you, Mr. Chairman.

Ms. Milkman. We appreciate your support.

Mr. Roybal. Thank you, Mr. Skeen.

INCREASE IN NUMBER OF WORKSHOPS

Ms. Young. I have just one last parting question, and that is with regard to workshops. You stated that you went from 178 workshops to 378 workshops. Is that correct?

Ms. Milkman. Not over the last year, no.

Mr. Roybal. I want to know how long did it take to go from 178 to 378?

Ms. Milkman. All right. We've got that in here.

Workshops. Producing workshops, 22. My predecessor was a Brigadier General, and he has this thing organized to a "T". I have benefitted tremendously from it. It's on the next page.

Ms. Young. We have it from 1974 to 1989.

Ms. Milkman. Yes, 1974 there were 87.

Ms. Young. Total workshops in 1974 were 87, and that was just after the amendment to the act which included workshops for the severely disabled. Now in 1989, there are 378 workshops. From 87 to 378, from 1974 to 1989, 15 years.

The greatest increase has been in workshops for the severely disabled, simply because the program for the blind had been in operation since 1939. So those workshops were pretty well settled and still are, as a matter of fact. The number of workshops for the blind does not increase that much.

The number of workshops for the severely disabled will increase as long as there is work for them to do.

WORKSHOP INSPECTIONS

Mr. Roybal. You anticipated my next question, and I am glad you did, to get that information directly from you.

I am still concerned about the fact that I believe to be one of your responsibilities to inspect or at least visit these workshops. As they increase, will you be able to inspect and visit the workshops?

Ms. Young. There are a number of different inspections that are made, and I think I will let Beverly answer that.

Ms. Milkman. The answer is we really have no choice but to do that, and I think that we may have to, in the future, come back and ask for another person. One of the people that we hired this last year is an inspector. We have trained some other staff people to do inspections, along with their other jobs, but there is no question, as it expands, we will need more resources.

The other thing that we have done in the past year is to involve the two national non-profit organizations we work with more in that process. We must do it ourselves, as the government agency, but we have given them the same questions to ask that we ask when they go out, and they must submit reports to us, so that we have both information that we have collected directly, and then we also have the supplemental information from them. That has proven to be very helpful.

Mr. Roybal. I believe that these visits, inspections, are most important and most necessary.

Ms. Young. And one of the promotion efforts that we are doing is visits by committee members themselves, who travel around the country, including me—in fact, in San Diego, which is where I just was, I visited Mental Health Systems. When we are there, we do not do any official inspection, but we do visit, and they are assured of our interest and concern.

Ms. Milkman. The other thing I would say, Mr. Chairman, is that within the last year we have also beefed up the content of our inspection visits. We were spending five, to seven, eight hours sometimes before, now we are spending at least a day and a half, often two days, and we are meeting with board members as well.

One of the questions that we ask board members is, do you have a policy when you hire your management people and your administrators of looking for people who are either blind or have other severe disabilities? So that we are elevating it to that level. Again, consciousness raising.

Mr. Roybal. That's excellent.

Ms. Young, I would like to thank you, and Ms. Milkman, for your responses. The committee will take your request under consideration.

Ms. Young. Thank you very much.

Mr. Roybal. Thank you. The meeting is adjourned.

[Questions for the record follow:]

Questions Submitted by Representative Daniel K. Akaka

Question. How many workshops are currently participating in the program?

Answer. At the present time, there were 393 workshops participating in the Committee's program. Of these 393 workshops, there are 80 workshops serving blind individuals and 313 workshops serving other severely disabled individuals.

Question. How many people are employed and receiving on-the-job training in your program?

Answer. During fiscal year 1989, 18,812 blind and other disabled individuals worked on Javits-Wagner-O'Day contracts. This work translated into 13.5 million hours of direct labor.

Question. Did the Committee examine the differences in salary between disabled and non-disabled employees? What are the findings of this examination?

Answer. The Committee has not reached a final decision on what research will be conducted with the additional resources made available for FY 1990. That decision is expected to be made within the next two months, and any contracts awarded to perform research will be finalized by late summer. Depending upon the complexity and scope of the research, the results would be available for 6 to 18 months after award of the contract.

Question. If the Committee did not undertake such an inquiry, why not?

Answer. At this stage of its FY 1990 research effort, the Committee has tentatively identified a number of topics it believes warrant study. These include an examination of salary differences, as well as other analyses of program impacts and operations. If the Committee does not decide to move forward this year with an examination of the differences in salary, it will be because other topics have been given a higher priority for support with relatively limited resources available. If that is the case, the topic will remain on the Committee's research agenda for consideration in the future.

[The justifications follow:]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Salaries and Expenses

For expenses necessary of the Committee for Purchase from the Blind and Other Severely Handicapped established by the Act of June 23, 1971, Public Law 92-28 [$1,062,000] $1,160,000 (Independent Agencies Appropriations Act, 1990.)

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Program and Performance

The Committee for Purchase from the Blind and Other Severely Handicapped was established by the Wagner-O'Day of 1938, as amended. Its primary objective is to increase the employment opportunities for the blind and other severely handicapped and, whenever possible, to prepare them to engage in competitive employment. In 1991, 18,500 blind and handicapped individuals are projected to be employed in 445 producing workshops. The Committee's duties include promoting the program, determining which commodities and services are suitable for Government procurement from qualified nonprofit agencies serving the blind and other severely handicapped; publishing a procurement list of such commodities and services; determining the fair market price for commodities and services on the procurement list; and making rules and regulations necessary to carry out the purposes of the Act. In FY 1991 the Committee expects to have 2,650 items on its Procurement List, and estimated workshop sales of $430 million.

The Committee staff's responsibilities include promoting and assessing the overall program; supervising the selection and assignment of new commodities and services; assisting in establishing prices; reviewing and adjusting these prices; verifying the qualifications of workshops; and monitoring their performance.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

SALARIES AND EXPENSES
OBJECT CLASSIFICATION (in thousands of dollars)

Identification code 95-2000-0-1-505		1989 [illegible]	1990 [illegible]	1991 [illegible]
	Personnel compensation:			
111.101	Full-time permanent	452	520	585
111.301	Other than full-time permanent	41	51	66
111.501	Other personnel compensation.	12	8	15
111.801	Special personnel service payments. . . .	0	0	0
111.901	Total personnel compensation.	505	579	666
112.101	Civilian personnel benefits	65	82	88
121.001	Travel and transportation of persons . . .	38	70	75
123.101	Rental payments to GSA	63	64	66
123.301	Communications, utilities, and miscellaneous charges	25	27	28
124.001	Printing and reproduction.	50	46	48
125.001	Other services.	81	170	170
126.001	Supplies and materials	18	6	10
131.001	Equipment	14	5	9
199.001	Total obligations . . .	859	1049	1160
	[illegible]	[illegible]	[illegible]	[illegible]

STANDARD FORM 300

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED
Program and Financing
(in thousands of dollars)

95-2000-0-1-505	89	90	91
SALARIES AND EXPENSES			
Program by activities:			
Select, price, and assign products and services of the blind and other severely handicapped for supply to the Government. (Total program costs, funded)	859	1,049	1,160
Change in selected resources (undelivered orders)	---	-----	-----
10.000 Total obligations	859	1,049	1,160
Financing:			
25.00 Unobligated Balance Lapsing	3	---	---
39.00 Budget Authority	862	1,049	1,160
Budget Authority:			
40.00 Appropriation	862	1,062	1,160
40.00 Reduction pursuant to P.L. 99-177	---	-13	---
43.00 Budget Authority (adjusted)	862	1,049	1,160
Relation of obligation to outlays:			
71.00 Obligations incurred, net	859	1,049	1,160
72.40 Obligated balance, start of year	149	103	126
74.40 Obligated balance, end of year	-103	-126	-139
77.00 Adjustment in expired accounts	-6	---	---
90.00 Outlays, excluding pay raise supplemental	899	1,026	1,147

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PERSONNEL SUMMARY - SALARIES & EXPENSES

95-2000-0-1-505	89	90	91
Total number of permanent positions	13	14	14
Full-time equivalent of other positions	.19	.23	.23
Total Compensable Work Years	12.00	14.03	14.03
Average SES Salary	$78,600	$93,700	$93,700
Average GS grade	10.58	11.08	11.85
Average GS salary.	$36,384	$36,947	$40,659

Type size:
8 point
14½ picas
vol. lit. solid

STANDARD FORM 306
July 1968, Bureau of the Budget
Circular No. A-11, Revised.
306-106

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Salaries and Expenses

DETAIL OF PERMANENT POSITIONS

95-2000-0-1-505	1989 actual	1990 estimate	1991 estimate
ES-5	1	1	1
GM-15	1	1	1
GM-14	2	2	3
GM-13	0	1	0
GS-12	2	2	3
GS-11	1	1	3
GS-10	0	1	1
GS-9	3	4	2
GS-8	1	0	0
GS-7	2	1	0
Total permanent positions	13	14	14
Unfilled positions, end of year	0	0	0
Total permanent employment, end of year	13	14	14
(Mono cast: 18.8)	(Mono cast: 4.9)	(Mono cast: 4.9)	(Mono cast:

WEDNESDAY, MARCH 14, 1990.

ADVISORY COMMITTEE ON FEDERAL PAY

WITNESSES

MARTIN L. DUGGAN, CHAIRMAN
LUCRETIA DEWEY TANNER, EXECUTIVE DIRECTOR

ADVISORY COMMITTEE ON FEDERAL PAY

Mr. ROYBAL. The committee will now hear from the Advisory Committee on Federal Pay. I am asking Mr. Duggan to proceed in any manner that you may desire.

Mr. DUGGAN. Thank you very much, Mr. Chairman. With me today is Lucretia Tanner, the Executive Director of our Committee. As you will recall, our other members are Mr. W. Perry Brown, and Mr. Warren Hendriks, Jr.

It is a pleasure for me to be back here, somewhat unexpectedly this year, because my term officially expired on January 20, but, under the provisions of the act, I am expected to stay in place until expelled or other treatment Congressman Hoyer might——

Mr. ROYBAL. Whatever comes first.

Mr. DUGGAN. I was pleased to read that he is among the snappy dressers in town. Please give him my compliments.

Mr. ROYBAL. Thank you, sir.

Mr. DUGGAN. I will telescope this, if you prefer.

Mr. ROYBAL. We would like to have your written testimony included in the record at this point, and then you can summarize.

Mr. DUGGAN. Fine. Okay. I appreciate that.

[The information follows:]

ADVISORY COMMITTEE ON FEDERAL PAY

Testimony of

Martin L. Duggan, Chairman,

on Fiscal Year 1991 Budget Request

House Appropriations Committee,
Subcommittee on Treasury, Postal Service
and General Government

March 14, 1990

I am Martin L. Duggan, Chairman of the Advisory Committee on Federal Pay. I have had the privilege of appearing before this Committee for several years and I want to express my thanks for allowing me the opportunity to present the Advisory Committee's budget request. My 6-year term as Chairman expired on January 20 but, under the Federal Pay Comparability Act of 1970, I continue serving until a new Chair is appointed or I am renamed Chairman. Last year a snow storm prevented me from being with you but Mrs. Lucretia Tanner, Executive Director, became my stand-in, and she is with me today.

Permit me to present a very brief statement about the Committee's activities and concerns, as well as its budget requirements for Fiscal Year 1991.

As you know, the Advisory Committee on Federal Pay was established by the Federal Pay Comparability Act of 1970 (Public Law 91-656) as an independent body and adviser to the President on pay matters. The Committee's recommendations apply to pay affecting approximately 1.4 million Federal employees covered by the General Schedule and those linked to the General Schedule who are employed by the Foreign Service and the Veterans Health Services and Research Administration (formerly the Department of Medicine and Surgery), part of the U.S. Department of Veterans Affairs. In addition, pay adjustments for the approximately 450,000 blue-collar workers have been capped at the same level as white-collar increases since 1978.

The Committee is composed of private citizens who are appointed by the President to serve 6-year staggered terms. The members include W. Perry (Pete) Brown, Vice President and Director of Personnel of the American Cyanamid Company; and Warren Keating Hendriks, Jr., Senior Vice President/Partner, DHR International, Inc., an executive search firm. Day-to-day activities of the Committee are carried out by two General Schedule employees.

The Advisory Committee submitted its annual report to the President on Augsut 21, 1989, entitled "The Bottom Line on Federal Pay--The Gap Became a Canyon." With your permission, I would like to submit it for the record. We believe the report reflects the seriousness of the pay situation and urges reform. The report endorsed the President's and Congress' agreement to a 3.6-percent pay increase but recommended that the President consider placing a 10-percent pay increase in his 1991 budget message to Congress. The Advisory Committee stated in its report that a 10-percent pay increase is necessary to send a strong message that the Federal Government is serious about the need to recruit and retain well qualified employees. The amounts actually required to meet the average comparability gap ranged from a low of 20.04 percent at the GS-1 level to 36.69 percent for those in GS-15 positions, and averaged 28.62 percent.

Additionally, the Committee heeded the advice from Congress and the numerous employee groups it meets with and urged that the Administration and Congress take steps to remove the remaining gap and budget for these pay increases over the next 4 years.

Substantial pay increases are needed now while steps are taken to implement a completely new pay setting plan. The Advisory Committee, along with others, including Federal unions, believes that a system based on local labor market conditions is the only fair long-range approach. Only when salaries are based on local labor market conditions will the public support an equitable Federal pay program. The Advisory Committee is hopeful that 1990 will produce legislation to begin phasing in such a locality pay system. Bills have or will be introduced by the Senate, House, and the Administration. We urge the Congress, working in concert with agency officials, employee organizations, and compensation experts, to review the various bills and begin reaching an acceptable compromise.

- -

Why is it necessary to rethink the current pay system provided by the 1970 Act? Based on increasing evidence, it is clear that the current system has failed to provide for an orderly mechanism to attract and retain the quality people to carry out the government's varied and important missions. Currently, about 189,000 of the white-collar General Schedule are under the special rates program, nearly 14 percent, and agencies still believe that even this is inadequate to meet their personnel requirements. Each year, more and more agencies and bureaus are calling for exceptions from the General Schedule salary structure, seeking escape either through demonstration programs or separate legislation. These special pleas are escalating in number and intensity. It is absolutely necessary to call a halt to this splintering and balkanization of the system. Rather, a revamping of the pay program is required, now to insure internal equity among departments operating within a geograpical area. If what we urge becomes reality this year, the Advisory Committee on Federal Pay will not be here to present its budget request to you for Fiscal Year 1992.

This year, because of the critical nature of the pay issue and pay reform, the Advisory Committee is scheduling its meetings with the employee unions and professional associations on April 24 and is planning to meet in at least four cities outside Washington. Tentatively, we are scheduling meetings in Boston, Massachusetts; St. Louis, Missouri; San Antonio, Texas; and San Diego, California. We hope that these meetings will highlight the problems the Federal compensation program is having in these areas and hear their views on a locality pay program. We also hope to heighten public awareness of the contributions Federal workers make in the community. Even though funds are extremely limited, we believe that pay reform is an idea whose time has come.

The Advisory Committee has supported and was pleased that Congress took steps to pass the pay ethics bill, which grants Federal executives pay increases as well. This was a necessary first step in restoring lost earnings. It is now necessary to turn attention to the work force that carries out the laws enacted by Congress and administered by the Executive Branch. Without the 1.4 million workers, the engines of government would halt, checks would not be sent, cancer research stopped, NASA immobilized, meat not inspected, wage and hour laws not administered, and the list goes on. Every single job in every single agency and department makes a contribution. Every individual is important and, without each person, government does not work.

The Committee has been invited to comment on the Senate pay reform bill next week. We believe that the Advisory Committee plays an important role in the current pay setting process, primarily as a monitor and conscience. Nevertheless, the Committee recognizes that the system requries change and we fully support constructive reform and urge that action be taken this year.

If comprehensive reform is not passed in 1990, it will be abundantly clear that each agency and occupational group will march to their respective Congressional Appropriations Subcommittees and ask for special treatment and a separate pay plan. The splintering, balkanization, and fragmentation will be under way and will not stop until only a handful of employees will operate under the General Schedule. Humpty Dumpty will have fallen and in the year 2000 we will talk about putting it back together again.

Let me now turn to the Advisory Committee's 1991 budget request. Our budget requirements are modest. For Fiscal Year 1991, we are requesting $207,000, only $2,000 more than was granted in Fiscal Year 1990 and which represents a 1-percent increase. As the current budget shows, we are operating with

$205,000 in Fiscal Year 1990. This sum covers all operating expenses, salaries and travel allowances of staff and Committee members when they are on Committee business, as well as rent and miscellaneous costs of our headquarters office. The Committee has always exercised financial restraint and intends to continue this policy in the future. These funds cover the bare necessities.

In the coming year, as in the recent past, we expect that pay and benefit issues for Federal workers will be a topic of intense debate and our Committee will devote its effort to analyzing the current issues and preparing its recommendations.

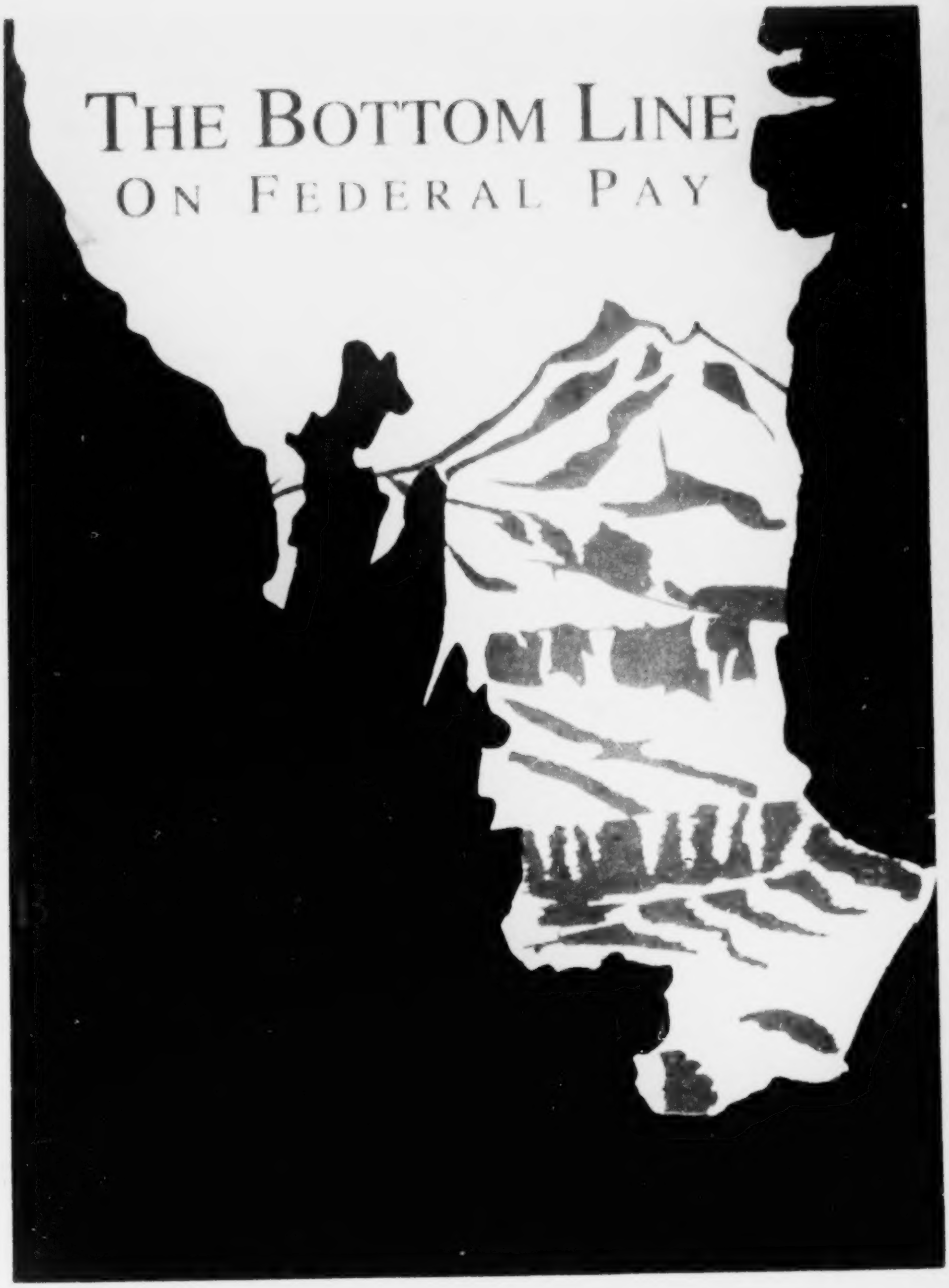
This concludes my remarks. Again, Mr. Chairman, I thank you and will be happy to answer questions.

Mr. DUGGAN. I think the highlights, Mr. Chairman, of our report, are that—and with your permission I would like to enter our Annual Report to the President, in the record.

Mr. ROYBAL. Without objection, it will be ordered.

Mr. DUGGAN. Thank you.

[Advisory Committee's 1989 Report to the President follows:]



THE BOTTOM LINE
ON FEDERAL PAY

ADVISORY COMMITTEE ON FEDERAL PAY
1730 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 653-6193

Martin L. Duggan, Chairman
W. Perry Brown, Member
Warren K. Hendriks, Jr., Member

Lucretia Dewey Tanner
Executive Director
Betty Woodward, Staff Assistant

August 21, 1989

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Advisory Committee on Federal Pay has the privilege of submitting its eighteenth annual report to you. This report includes the Committee's recommendations for the Fiscal Year 1990 pay adjustment that affect the 1.4 million white-collar employees and other statutory pay systems linked to it.

The Committee believes its recommendations provide a fair adjustment to the work force and alleviate the critical recruitment and retention problems the Federal Government is now and will continue to face in the future.

Respectfully submitted,

W Perry Brown
W. Perry Brown
Member

Warren Hendriks
Warren K. Hendriks
Member

Martin L. Duggan
Martin L. Duggan
Chairman

CONTENTS

Page
Summary of Recommendations 1
Introduction 2
Events of 1988-1989 6
  Federal Executive Boards 6
    The New York FEB 7
    Los Angeles County FEB 7
    Metropolitan Northern New Jersey FEB 7
    Boston FEB 7
  Escaping the General Schedule 8
  Executives, Legislators, and Judges 10
  The National Commission on the Public Service 11
  Congressional Hearings 12
  Attitude Surveys 13
Local Market Based Pay 14
Benefits 15
Quality and Productivity of the Work Force 17
Conclusion 19
Appendix 1. Organizations Appearing Before the Advisory Committee on Federal Pay, July 25, 1989 20
Appendix 2. Summary of Oral and Written Statements by Representatives of Unions, Professional Associations and Others 22
Appendix 3. Pay Agent Report 26
Appendix 4. Highlights From FEB Reports 28
Appendix 5. Technical Notes 30
Table 1. Chronology of General Salary Increases, January 1971 to January 1989 31
Table 2. Wage and Consumer Price Index Increases, 1978-89 32
Table 3. Percent Increase of General Schedule Salary Scales Required for Comparability with Private Sector, Selected Grades and Dates 33
Chart 1. Federal Pay Has Eroded by One-Fourth 4
Chart 2. Federal Pay Increases Substantially Below Other Sectors 5

SUMMARY OF RECOMMENDATIONS

— The Advisory Committee on Federal Pay endorses the proposed 3.6 percent pay increase for Federal white-collar and military personnel, agreed to by the Administration and Congress. However, the pay gap between the private and Federal work force stands at 28.6 percent, as reported by the Pay Agent. Because this gap has resulted in persistent and critical staffing problems, the Committee recommends an additional 6.4 percent as a catchup towards closing the pay deficit. It further recommends that the remaining pay shortfall be erased by phasing in the gap over the next 4 years and that the President and Congress consider announcing this as a joint policy statement.

— A 10-percent pay increase is necessary to send a strong message that the Federal Government is serious about the need to recruit and retain well qualified employees. The Advisory Committee recommends that this message and amount be included in the President's Fiscal Year 1991 budget submission to Congress. The projected 3 percent now in the budget falls short of keeping pace with expected increases in the cost of living and anticipated wage adjustments in the economy and makes no attempt to reduce the comparability gap.

— Federal unions, associations, individuals, and Federal Executive Boards have warned of the government's inability to compete successfully in the market for highly qualified job seekers. Low pay, eroding benefits, and a poor public image point to the need for change. As recommended by the National Commission on the Public Service and others, as well as the Advisory Committee for the past 5 years, the nationwide General Schedule no longer serves as an effective pay system and must be replaced by a pay plan which reflects local labor market conditions. The Advisory Committee urges pay reform and swift action by Congress to restore the Federal wage structure to a market sensitive pay system on a locality basis.

— The Federal Employees Health Benefit Program is in serious need of restructuring in order to reduce costs and to prevent the continuation of adverse selection by Federal workers and retirees. While once a leader in the benefit area, the Federal Government has permitted its benefit package to decline. Combined with a staggering pay gap and negative public perceptions, public service has become an unattractive employment alternative. The Advisory Committee urges that the Federal Government develop an innovative benefit package to meet the needs of today's workers.

— The Advisory Committee applauds President George Bush for his strong leadership to promote the value of public service and his recommendation to raise salaries of the top leaders of the Judicial and Executive Branches of government by 25 percent and members of the Senior Executive Service by 8 to 25 percent. The Committee also recommends that the pay "cap" placed on the approximately 1,000 employees in the supergrades of the General Schedule be removed.

— Finally, the Advisory Committee strongly urges the government to reexamine its policy of false economy—not paying competitively, becoming the employer of last resort—while the costs of training and retraining have escalated and productivity is dropping. These hidden costs far outweigh the pay increases and restructuring of the pay system that are needed now.

INTRODUCTION

Annually the Advisory Committee on Federal Pay carries out its mandate under the largely forgotten law, the Federal Pay Comparability Act of 1970 (P.L. 91-656). It is a law enacted by Congress in order to insure an orderly and fair mechanism for setting pay for the 1.4 million Federal white-collar workers under the General Schedule. Employed in over 400 occupations in the Executive Branch, Federal workers perform diverse and needed services to the American public.

Also linked to the General Schedule are the Foreign Service and the Department of Medicine and Surgery, part of the U.S. Department of Veterans Affairs. Military pay had also been linked until 1980 and in recent years has been relinked. In addition, blue-collar workers, whose pay is set by the Federal Prevailing Rate Systems Act of 1972, have been capped at the white-collar pay increase since October 1978.

When written, the law was viewed as a method to provide a regular and systematic way of compensating Executive Branch employees based on objective salary data. The last full comparability adjustment occurred in October 1977, when 7.5 percent was put into effect, as shown in the chronology of increases in Table 1. The Pay Act outlines the compensation principles under which the government would operate:

> "(1) there be equal pay for substantially equal work;
>
> "(2) pay distinctions be maintained in keeping with work and performance distinctions;
>
> "(3) Federal pay rates be comparable with private enterprise pay rates for the same levels of work; and
>
> "(4) pay levels for the statutory pay systems be interrelated."

How well have these fundamental principles been operating? Based on the volume of reports and documents issued this past year alone, it appears that the comparability principle has not achieved its promised goal of paying at the average of the private sector, is not attracting and retaining a skilled work force, and, as a result, the quality of service offered the public has declined.

In this report to the President, the Advisory Committee highlights the work of a number of concerned groups who see an erosion of government service and urge reform of the pay system. The Advisory Committee shares their concerns, offers additional recommendations and, finally, calls for immediate action to correct the seriously failed pay system.

At the time this report was prepared, it was clear that agreement existed between the Administration and Congress that a 3.6-percent pay increase for Federal white-collar employees would be implemented in January 1990, the same increase that will be granted to the military. In granting the 4.1-percent pay increase on January 1, 1989, Congress appropriated no additional funds to agencies. Agencies were asked to absorb 100 percent of this pay increase. Agencies will again be asked to absorb a substantial share of the January 1990 increase. Although the deficit has and will remain the driving force behind all decisions, it is important that Congress recognize that employee pay and benefits are part of the cost of doing business.

The Federal Government is the single largest employer. Yet, Federal employment has remained stable over time and, if measured as a proportion of overall population, has actually declined. Federal civilian compensation (pay and benefits) compared to the total budget outlays over a 20-year period also declined, as shown:

	Total Federal compensation and benefits (in millions)	U.S. Budget (in millions)	Percent of budget
1969	$26.7	$183.6	14.5
1989	114.5	1,135.5	10.1

SOURCE: Special Analysis of the U.S. Budget, Fiscal Years 1971 and 1990.

In Fiscal Year 1989, the U.S. budget reached $1.3 trillion, with civilian compensation representing 5 percent, or one-twentieth, of the total.

Chart 1 shows that, in real terms, Federal pay has eroded by one quarter and only Congressional salaries have been eroded more over a 20-year period.

State and local governments are not part of the annual Professional, Administrative, Technical and Clerical Survey conducted by the Bureau of Labor Statistics, an exclusion under the 1970 Pay Act. It should be pointed out, however, that if this sector is considered, raises would be even greater. As shown in Chart 2, Federal employees have received about one-half State and local government increases.

On July 25, the Advisory Committee met with the Federal Employees Pay Council, other unions, and representatives of professional associations. Persons representing these organizations appear in Appendix 1. (Summaries of their statements and other comments submitted in writing appear in Appendix 2.) Representatives appearing before the Committee offered sound and reasonable advice and were temperate in their appraisal of increases that are achieveable. They pointed out that agencies in high wage-high cost areas are increasingly experiencing difficulty in carrying out their missions because of the inability to recruit and retain qualified people. The crisis exists in staffing for many critical occupations.

"What is there about working for a government that equates with working cheap? . . . Auto executives and Wall Street junior traders have incomes far beyond what any government employee could hope to earn, and no one seems outraged by the fact."

"Why Do We Devalue Public Service," Margery Elfin, *Washington Post*, September 7, 1988.

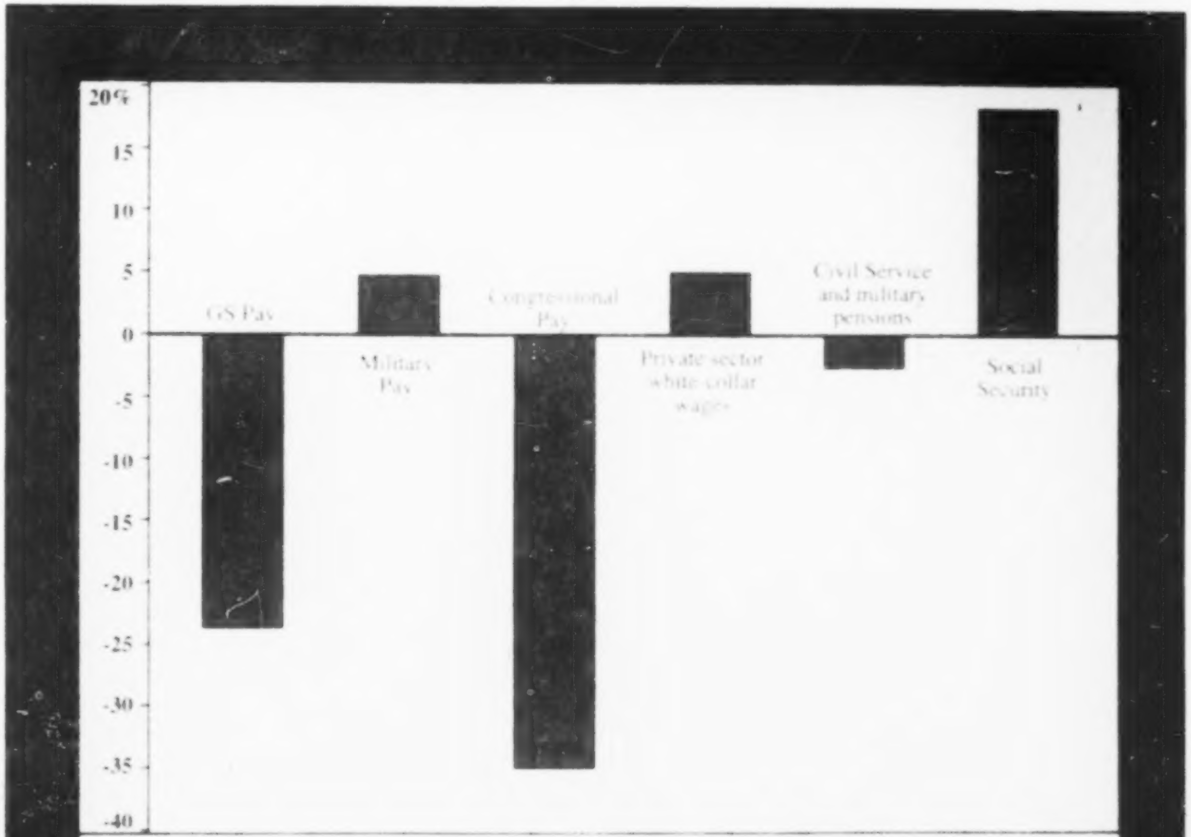
Based on the testimony presented, written submissions, and the recommendations made by highly regarded reports issued this year, the Advisory Committee believes that an additional and immediate 6.4 percent is warranted as a catchup towards eliminating the 28.6 percent pay gap. Although the pay gap is clearly too great to be bridged in one or two steps, a good faith effort should be made to at least equal the increases granted in the private sector and to provide additional amounts as a catchup.

The pay gap should be eliminated over a 4-year period, while at the same time the government introduces a new pay system based on local labor market wage rates.

The Advisory Committee strongly recommends that the Administration, in preparing its Fiscal Year 1991 budget message to Congress, reconsider its original proposal to provide a 3-percent pay increase for white-collar workers. This 3 percent is insufficient to keep pace with projected increases in the Consumer Price Index and the anticipated salary budgets in industry, expected to be in the 5-percent range. The Advisory Committee believes the Administration would be well served to consider including a 10-percent pay increase in its Fiscal Year 1991 budget submission. This amount would stem the tide of those highly skilled employees who are planning early retirement and sends a signal to young people who would not have considered a public service career that the Federal Government recognizes the need to hire the best.

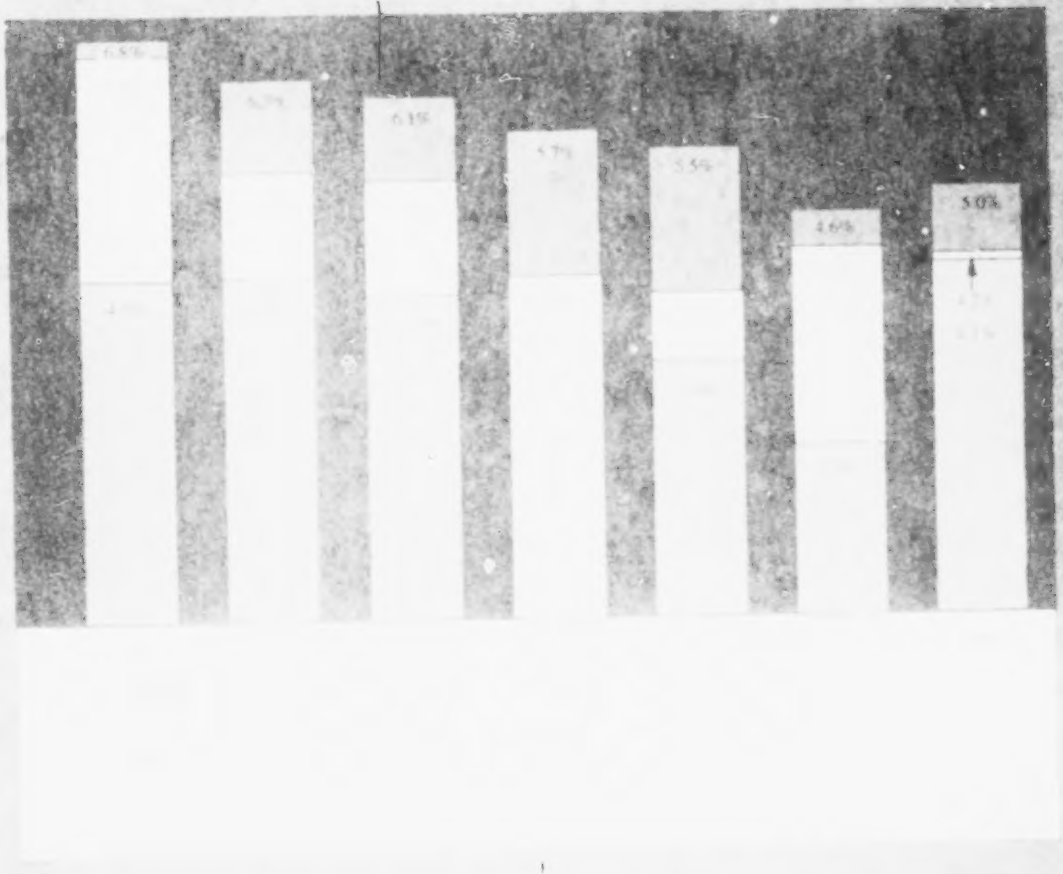
"When salaries are such that the best people take themselves out of the running, the field is left to those primarily interested in power—ideologues who will take the job regardless of what it pays."

"How to Guarantee a Mediocre Judiciary," Lawrence Grey, New York *Times*, April 4, 1989.


20%
15
10
5
0
-5
-10
-15
-20
-25
-30
-35
-40
GS Pay
Military Pay
Congressional Pay
Private sector white collar wages
Civil Service and military pensions
Social Security

[illegible]

Chart 2. Federal Pay Increases Substantially Below Other Sectors, 1982–88



EVENTS OF 1988-1989

In the past, the Advisory Committee has heard and read of isolated anecdotal reports of recruitment and retention problems created as a result of the pay situation, deteriorating working conditions, the poor perception of Federal employment, and the more materialistic values of the Nation's youth. During the 1988-89 period, the volume of evidence has grown overwhelmingly to support the contention that serious erosion has developed in the Federal work force. Anecdotal evidence has been replaced by data collected from agencies concerned about their inability to operate. Federal Executive Boards in major cities have mounted an all out campaign to document the hiring and retention problems and the hidden costs associated with recruiting and training. Agencies attempting to cope with reduced budgets and increasing personnel problems are seeking to escape the General Schedule by placing more employees under special rates, demonstration projects, or separate legislation.

The pay debacle experienced earlier this year showed how deep the public resentment is over pay increases for judges, legislators, and executives who were denied an adjustment that would have restored their earnings to 1969 levels. On the heels of this defeat, the National Commission on the Public Service offered a comprehensive set of recommendations for improving government service, one of which was for specific pay increases.

The House Post Office and Civil Service Committee held a series of hearings on the recommendations offered by the National Commission on the Public Service and promised action on a number of issues.

Attitude surveys of Federal executives and rank and file employees point to a widespread dispirited work force. More importantly, the pay situation, combined with morale problems, is showing up in reduced Federal productivity.

Finally, the Federal work force health care benefit package is the subject of fierce debate and continues to deteriorate as a result of the rising cost of health care generally, the multiplicity of plans, and the lack of agreement on how to fix it.

The following discussion details the year's Federal developments and offers a series of remedies to improve the downward course the government is heading. Even if action were taken today, however, positive relief will not occur immediately. Perceptions of the general public as well as the Federal work force itself, like battleships, are slow to change their course. This is why an agenda for change is urgently needed now.

Federal Executive Boards

During the past year, staffing problems in major metropolitan areas reached crisis proportions. Documentation of the problems have been developed with occupational turnover data. In order to justify substantial increases, the Federal Executive Boards in New York City, Northern New Jersey, Los Angeles County, and Boston have submitted reports outlining their severe recruitment and retention problems.

The following provides some of the background on each report and highlights the issues raised.

The New York FEB. In its 1988 report to the President, the Advisory Committee summarized the New York Federal Executive Board report, "New York's 'Not So Quiet' Federal Employment Crisis," dated April 1988. The New York FEB cited a personnel crisis that required a 25 percent pay increase across the board for all Federal employees in New York City and Long Island and requested that the Office of Personnel Management grant the increase under the special rate provision.

Subsequent to the Advisory Committee releasing its 1988 report in August, OPM responded to the New York FEB special pay request by denying it on the basis that the special rate legislation was not designed to encompass geographic differentials for all employees. The FEB then began collecting turnover data for 81 separate occupational series, covering over 70 percent of the work force, to demonstrate the recruiting and retention problems in the area. These 81 were in addition to the 39 occupational series that had previously been submitted by the FBI.

Data collected show widespread problems in staffing with quality applicants. For example, turnover of revenue officers and social insurance claims examiners occurs almost immediately after personnel are hired. The Social Security Administration calculates that staffing shortages have resulted in increased overtime costs, additional training, transfer of work for a total additional cost of $1.5 million.

Even more disturbing to agencies is the lack of talent coming up through the ranks to take over future management positions.

Additional details appear in Appendix 4.

Los Angeles County FEB. The Los Angeles County FEB's October 1988 report indicates a staffing crisis so severe that it proposes one of three approaches: either a 37 percent increase in the General Schedule for all grade levels to be justified as a demonstration project, or full comparability with pay rates in the Los Angeles County area, or special rates which would raise all salaries by 30 percent. Either of these pay approaches would apply to 32 departments and/or agencies and 16,000 employees. The Los Angeles FEB conducted its own wage surveys of the area and found that private industry, State, and local governments paid as much as 149 percent more for comparable jobs.

The report calculates that the additional cost of new recruiting, hiring, training, overtime, and lost revenues totaled $164.7 million compared to the cost of salary increases, $139.8 million. The FEB concludes that, when the hidden costs are calculated and compared to an outright pay increase, a net savings of $25 million could actually occur.

Metropolitan Northern New Jersey FEB. "A Report on the Decline of Federal Service in New Jersey," dated August 1988, recommends a locality pay system and urges an immediate across-the-board 25 percent pay increase. The report points out that, while it appears that there is a long line-up for jobs, those seriously interested, then found qualified, radically diminish in numbers, as indicated by examples cited in the Appendix.

According to the New Jersey FEB report, "Lack of interest in Federal employment among young people was reported by the 24 placement directors in New Jersey colleges who were contacted to provide information on the average 1988 starting (private sector) salaries. The same holds true for recruitment of applicants for cooperative education positions which largely benefit minority groups." In addition to the hiring problems, agencies in New Jersey report that, within the next 5 years, 20 percent of the full-time General Schedule work force will be eligible to retire and they raise the question, "Who will replace them?"

Boston FEB. Citing recruitment and retention problems, the Boston FEB recommends a series of possible options, including a geographic pay add-on, a cost-of-living differential, extension of hiring at above Step 1 rates below GS-11, similar to that used for above GS-11, a recruitment bonus for shortage category occupations; and special salary rates.

The report, issued in March 1989, focuses on the direct and hidden costs of the excessive attrition rates. Each agency offered examples of the difficulty experienced in hiring and contributed data on the hidden costs, including the costs of recruitment, advertising, processing, separation, and training. Agencies provided a comparison between differences in their historical attrition rate and that for the Fiscal Year 1988. Calculating that they normally hire 4,133 people at a cost of $38.6 million, in Fiscal Year 1988 they spent $98.4 million to recruit 10,534 employees.

> ***"This agency reports that despite enormous advertising expenditures, 80 percent of candidates hired have been 'walk-ins' to personnel who are just as fast to walk out—often with government property or in handcuffs after being involved in violent incidents with co-workers. Worse, yet, is the potential for these incidents to occur with patients."***
>
> **Veterans Administration Hospital**
> **(cited in Boston FEB report)**

In summarizing all the FEB reports, it is fair to say they all reach virtually the same conclusions:

- Federal salaries are far below the area's private as well as State and local wage structures, creating severe recruitment and retention problems.
- The pipeline for higher level management positions is drying up as those eligible for retirement leave.
- Even with special rates for clerical and secretarial positions, the Federal Government is behind and losing people.
- Despite what appears to be a large pool of applicants, there are small numbers of people who are found to be qualified, willing to accept Federal employment, and then actually perform well on the job.

The documentation supplied by the Federal Executive Boards is detailed and convincingly portrays the personnel problems agencies are experiencing. Their sense of urgency cannot be dismissed without taking action.

Escaping the General Schedule

In addition to coordinating efforts with the FEB in major cities around the country, agencies, bureaus, and offices within departments are seeking to establish separate identities in order to escape the limitations of the General Schedule pay system.

Arguments presented in favor of creating independence include the unique characteristic of the occupation or agency and the ability to be more efficient and effective with greater flexibility. In reality, the underlying reason for separation is the ability to pay higher salaries in order to adequately staff their missions.

The group of governmental entities seeking and gaining separate treatment continues to grow:

- Currently, 10 percent of the Federal work force, or 150,000 employees, are on special rates. The special rate program is authorized under Section 5303 of Title 5, U.S.C. and permits the President to establish special minimum rates of basic pay. These rates may apply to one or more grades, occupations, or series in one or more areas when agencies are handicapped in recruiting and retaining well qualified persons because private industry rates are more. As the government has found it increasingly difficult to meet its staffing needs, the definition of competition has been expanded to include other public sector employers and Federal installations in remote areas. According to testimony presented to the Advisory Committee, OPM projects that by 1992, some 350,000 workers will be on special rates. The question now becomes "How long will it be before all 1.4 million workers are on a special rate?"
- The FDIC has a cost-of-living add-on to the General Schedule and the Federal Reserve Board is developing a market sensitive pay system comparable to that in its district banks. Until

recently, both followed the General Schedule, although they were authorized to develop their own pay plans. They now believe salary policies that are competitive are required.

—A study by the National Academy of Public Administration recommends that independence would enable the U.S. Patent and Trademark Office to pay its patent examiners and top executives higher rates.

—The National Institute of Standards and Technology is operating under a demonstration project to provide pay and benefit packages that compete with similar research organizations.

—The FBI's New York office has authority to pay all employees reassigned within 50 miles of the city a lump sum bonus of $20,000. Similar proposals are being made in other hard to staff sites.

—The exodus of top flight researchers from NIH prompted an interest in turning the center into a private enterprise.

—The former Secretary of Transportation has called for a semiautonomous FAA, in order to solve its personnel problems. The FAA has decided to pay increases of up to 20 percent to 2,100 workers at its 11 busiest airports and centers under a demonstration project.

—The House of Representatives Department of Defense appropriations authorization bill establishes four pay and benefit demonstration projects for DOD and one for the Department of Energy, taking 100,000 employees out of the General Schedule. The Senate bill would permit demonstration projects for up to 250,000 employees in all government, 10 percent of the work force, a far reaching exclusion.

—The Administrative Law Judges, numbering 1,000, seek a special corps status to be excluded from the General Schedule, and placed in an executive pay system.

—As a result of the VA's nursing shortage, bills have been introduced to make salaries for the 34,000 nurses more competitive with the local job market and grant collective bargaining rights.

—Another commission has been formed to study pay issues. This is the National Advisory Commission on Law Enforcement. This Commission was created by the Omnibus Antidrug Abuse Act of 1988 to study and make recommendations on the pay and benefits of law enforcement officers in all Federal agencies. The agencies employing law enforcement personnel find that local police authorities pay more and are able to lure trained personnel from the FBI, Capitol Hill police and other enforcement agencies.

—The list goes on.

The Advisory Committee warned in past reports of the coming balkanization of the General Schedule. The above represents only part of the many groups that have been successful or are seeking an escape from the General Schedule. Some might welcome the fragmentation now taking place and justify it on the grounds of "unique agency cultures." That system was tried and found disruptive before passage of the Classification Act of 1923. The 1923 Act achieved a systematic approach to classifying and paying for the same job levels among the government's various departments. It achieved a more fair and equitable pay policy. Now, the spectre of a have and have not work force within the Federal Government is becoming more of a grim reality as comprehensive reform is delayed.

Repeating history is not the solution to the current problem. *Failure to act on a comprehensive bill will only create competition within and between agencies, promote job hopping, and disrupt operations.*

Executives, Legislators, and Judges

Last fall, the Commission on Executive, Legislative, and Judicial Salaries, established by Public Law 91-206, met to review and recommend salary adjustments for the approximately 2,500 top officials in the three Branches of government. Known as the Quadrennial Commission, it held hearings in November and the Advisory Committee was asked to present its views. The Advisory Committee, along with other organizations, recommended substantial pay increases in order to compensate these officials at the 1969 level of salary, at a minimum. The Advisory Committee also stated that the increases for Congress should be a quid pro quo for eliminating the honoraria, currently 30 percent of the $89,500 salary of members of the House and 40 percent for the Senate. The honoraria system gives the appearance of bias in voting and is undermining the credibility of the institution. As pointed out by the Advisory Committee and other groups, salary increases are deserving and needed for several reasons. First, Federal salaries have failed to keep pace with inflation. In constant dollars, salary levels are approximately 35 percent less than rates for the same positions in 1969. As a result of the erosion, the average length of service for top Executive Branch officials has declined to about 2 years.

Further, private sector salaries for executive positions are far superior in absolute pay levels and have increased faster than wages for any other segment. While there is general agreement that Federal raises could not and should not match those in business, effort should be made to narrow the growing disparities.

Also appearing before the Commission was James Miller III, former Director of the Office of Management and Budget, who said, "Now I realize it may come as a shock to many people that a penny pinching former budget director would advocate spending more money. . . . However, I believe we are being penny wise and pound foolish. . . . That is to say, by raising pay scales we would be able to retain the best people and attract better people to government and that the value received from the increased pay would far exceed the cost." Further he said, "About 40 percent of the pay increase would be returned to the Federal government."[1]

The Advisory Committee and others also recommend that, if Congress failed to enact the salary increases recommended, then a delinking or decoupling of salaries among the three Branches must be accomplished.

The Quadrennial Commission sent its recommendations to the President to raise the President's salary from the $200,000 set in 1969 to $350,000 to take effect January 1993, and raise Congressional pay 51 percent, and Executive and Judicial Branch salaries by varying amounts over 50 percent in 1989.

The increases recommended by the Quadrennial Commission and Presidents Reagan and Bush were defeated by a public outcry carefully orchestrated nationwide. The public viewed the increases as too large and faulted Congress for not having to vote in favor of them for the increases to take effect.

Newspaper editorials, talk show hosts, and the media marshalled a consensus that the increases were outrageous. In the face of massive public opposition, Congress voted no pay raise for anyone. Executives who had postponed their decisions to leave because of the likelihood of a pay raise are reconsidering and now leaving. When H. Robert Heller, a member of the Federal Reserve Board announced his resignation in June, he said "I certainly wouldn't go if pay weren't an issue."[2]

---

[1] See transcript of November 10, 1988 hearing before the Quadrennial Commission on Executive, Legislative and Judicial Salaries, pp. 39-41.

[2] Wall Street Journal, June 22, 1989, pg. A2.

A few courageous members of Congress defended the increases and too few members of the public spoke out in support:

On July 27, the President submitted a pay proposal to Congress calling for increases of 25 percent for those in Executive Levels I through V and salary increases ranging from 8 percent to 25 percent for senior Executive Branch officials. In June, the President had recommended a 25-percent pay increase for the Judiciary. At the same time, the President submitted a proposal to reduce the ceiling on Congressional honoraria by 50 percent in 1990 and total elimination by 1991. At the time this report was prepared, no action had been taken on any of these recommendations. *The Advisory Committee urges Congress to enact these pay proposals in order to at least partially restore lost earnings.*

> ***"Who would have thought that so many Americans who love incumbent Congressmen so dearly as to award them something resembling life tenure simultaneously hate them so much that they would require them, along with Federal executives and judges, to serve at inadequate and steadily decreasing real compensation?"***
>
> **"Miserable Wages, Miserable Leaders"**
> **Robert H. Bork New York *Times*, December 23, 1988**

The National Commission on the Public Service

It began 3 years ago with a report entitled the "Quiet Crisis" and a conference jointly sponsored by The Brookings Institution and the American Enterprise Institute. As an outcome of the meeting and a commitment from Paul Volcker to serve as Chairman, the National Commission on the Public Service was formed. Drawing on 36 leaders from all major communities—business, academic, the public sector, as well as former President Ford—the Commission studied the five major issues it believed confronted the Federal Service:

—Public perception of the public service.

—Recruitment and retention.

—Education and training.

—Relations between political appointees and career executives.

—Pay and compensation.

The 36 public volunteers served on five task forces to study these issues and to make recommendations for improving the public service. The awaited summary report was released in April, followed by specific recommendations from each of the five separate task forces in a separate report.

The summary report, "Leadership for America: Rebuilding the Public Service," offers fifteen goals along with 45 specific recommendations for achieving them.

The report's detailed analysis of the public service serves as a blue print for change. A review of all recommendations would be too lengthy; however, the Advisory Committee believes that restating the 15 goals is necessary: (1) rebuild the public trust, (2) improve the President's appointment process, (3) make more room near the top for career executives, (4) decentralize government management, (5) strengthen the Presidential/career process, (6) rebuild student interest, (7) recruit the very best graduates, (8) open new channels of communication, (9) simplify the recruiting process, (10) increase the representation of minorities, (11) provide competitive pay and demand competent performance, (12) strengthen the government's personnel agency, (13) increase government productivity, (14) provide the training to succeed, (15) improve the government work place.

Among its specific recommendations and priorities is the establishment of a permanent independent advisory council, composed of public and private sector individuals, to monitor the state of the Federal sector and to make recommendations for change. It also strongly endorses a scholarship program for those seeking a public sector career, modeled on the military academies.

Pay was only one of the issues the Commission addressed and deliberately relegated it to near the last in its report for fear that these recommendations would overshadow all the others. Specifically, a 25-percent pay increase was recommended now for the top executives and the three Branches and an additional 10 percent in 1991. For the General Schedule, the Commission report states: "The President and Congress must give a higher budget priority to Civil Service pay. . . . It recommends a pay setting system that recognizes the fact that public employees live and work in localities characterized by widely different living costs and labor market pressures, and adjusts compensation upward accordingly."[3]

The Advisory Committee is pleased that *the Commission has extended its tenure for another year to work towards implementing its agenda for change*. The Advisory Committee pledges its continuing cooperation with these efforts.

Congressional Hearings.

"Unless this hemorrhaging of key NASA personnel is stopped soon, NASA will be once again in a critical situation which will threaten its ability to carry out its mission."

Dr. James Fletcher
Former Administrator, NASA

The House Post Office and Civil Service Committee, chaired by Congressman William D. Ford, held a series of hearings following the release of the Commission's report. While the pay issue was not intended to be the focal point of the hearings, it quickly surfaced as the single most important subject. In an unprecedented appearance by a Chief Justice of the Supreme Court, William Rehnquist conveyed the urgency of the problem by stating, "I wish to emphasize today in every way that I possibly can the critical need for a significant upward adjustment of judicial salaries. Without that sort of an upward adjustment, we are going to begin to see more resignations from the bench, more damage to the morale of those judges who remain and more difficulty in recruiting new judges."[4] The Chief Justice asked for an immediate 30 percent raise, from the $89,500 salary for Federal District Judges, to $116,350, followed by regular cost-of-living increases in the future.

Current and former executives appeared before the House Committee, including NASA and NIH officials who stressed the need for immediate pay action:

"We're losing our superstars."

Dr. James Wyngaarden
NIH Director

As pointed out by Dr. Noel Hinners, who resigned as Deputy Associate Administrator of NASA, the agency made 27 offers to its employees in other parts of the country to move near Reston, Virginia and were rejected by 25 because of the high living costs.

---

[3] See *Leadership for America: Rebuilding the Public Service*, p. 38.

[4] Testimony before the House Post Office and Civil Service Committee, May 3, 1989.

The Post Office and Civil Service Committee hearings brought the Commission's recommendations before the public and conveyed the severity of the problem.

Attitude Surveys

The Federal Executive Institute Alumni Association annually surveys its members to determine their views on a range of issues. Results of the 1988 survey show that nearly one-half of the respondents would not encourage young people to seek a Federal career and more than one-half believe that the quality of the new hires in their agency is marginally or much worse than 10 years ago. Additionally, 7 out of 10 indicate their agency is experiencing a brain drain principally because of the erosion of pay and benefits. To lesser extent, they attribute the drain to better opportunities existing outside government and the poor public image of Federal employees.

Despite these views, 45 percent indicated that if they could retrace their career they would still work for the Federal Government, primarily because of the challenging work, commitment to public service, and the personal satisfaction they received. For the quarter who would select another career path, pay and benefits and the image problem were the primary reasons given.[5]

Results of this survey correspond to findings from another study conducted at about the same time but one covering a broader cross section of Federal employment. While the FEIAA study is confined to those in GS/GM-15 and SES positions, the average grade in the Digest Survey was 10.95.[6]

In both surveys, Federal employees support a white-collar pay system based on local market conditions or locality pay, favor an early out retirement option, and believe that a cafeteria benefit approach would be beneficial.

> ***"Of the 10 percent of all college seniors who earn a 3.5 grade average, only 2 percent enter public service. Among college seniors belonging to the major academic honor societies, less than 5 percent look with favor on a government career, while over a third are hoping to work for a large corporation. By no stretch of the imagination, then, can we claim that government in America—either at the federal, state or local level—attracts its fair share of the nation's young talent."***

---

[5] Results of the survey were published in the FEIAA *Newsletter*, No. 126, April 1989, "Summary Results of 1988 Survey."

6 "Survey Finds Morale Rock Bottom," Publisher's Extra, Federal Employees' News Digest, April 1989

LOCAL MARKET BASED PAY

There is a growing consensus that the current pay system providing nationwide rates has become unacceptable. Locality pay is seen as an alternative, a reform the Advisory Committee has recommended for the past 5 years. The term locality pay, however, means different approaches to different people. To some, for example, it means calculating the cost of living in an area and providing a COLA add-on to wages. Those favoring this approach contend that housing is one of the most important cost differences as well as transportation, food, and other household items. The Federal Deposit Insurance Corporation is using a COLA formula developed by the Runzheimer International, a management consulting firm.

Others, including the Advisory Committee, advocate using the general private sector approach of basing salaries on actual wages paid in an area, which indirectly incorporates living costs. Even with a wage based system, many approaches are possible. For example, the white-collar pay system could be modeled after the blue-collar wage grade system, which covers 135 separate areas, or it could cover far fewer locations. The system could include all occupations or those hired primarily within a local labor market. Many combinations and approaches are possible.

Regardless of which approach is selected ultimately for legislative action, the Advisory Committee strongly urges that the technical decision-making process include Federal employee representation. *The Advisory Committee recommends that locality pay legislation be developed and enacted in the 101st Congress.*

BENEFITS

The Federal Employees Health Benefit Program is the subject of continuing controversy and, more importantly, ever increasing cost escalation.

Last year, a report by Towers, Perrin, Forster and Crosby found that the program "poorly serves the needs of many enrollees and estimates that the program costs upwards of one-half billion dollars a year more than would be necessary under a more efficiently designed system."[7] The Towers study cited the proliferation of plans and the adverse selection process as the major source of the increased costs.

The FEHBP was studied further, and this spring the Congressional Research Service released its own analysis of the program. Unlike the conclusions reached in the Towers study, this report finds that savings will not occur even with a major restructuring of the program. According to the CRS, cost savings could only be achieved by reducing benefits or shifting even more costs to the participants.[8]

One of the major health insurance companies that has participated in the Federal program over 30 years decided not to wait for restructuring or other reports and opted out of the program entirely. Citing significant defects in the structure, Aetna Life Insurance Company announced that it is withdrawing from the government's program and that its current 187,000 subscribers must find another plan by year's end. Adverse selection, that is, healthier employees enrolling in the less costly HMO's and those in need of more health care joining larger, established companies like Aetna, push the costs of coverage higher. As a result of this continuing adverse selection process, Aetna premiums have increased 106 to 131 percent in just 2 years. In 1988, the Blue Cross/Blue Shield high option plan cost the enrollee (for family) $99.48 every two weeks, or $2,586.40 a year, and in 1989 the employee pays $4,544.02, an increase of 76 percent in one year.

It is estimated that next year's remaining plans will increase premiums substantially once more, prompting those with more costly plans to consider switching to less expensive plans providing less comprehensive coverage. In order to alleviate the likely increased costs resulting from Aetna's departure, a stop gap measure has been introduced to forestall increases that could potentially wipe out the proposed pay increases.

The U.S. Postal Service participates in the same FEHBP, although employees, able to bargain collectively, pay lower premiums than their Federal counterparts. USPS pays 75 percent of the cost, compared to Federal agencies' 60 percent. The Postal Service, dissatisfied with the current system, is considering opting out of the Federal program and establishing its own at a lower cost with the same level of benefits.

Clearly, the Federal health benefit program is in disarray and fundamental changes are called for. When a benefit increasingly becomes a burden on employees, it is time to quickly reassess what is offered.

About 400,000 Federal workers do not participate in the health program—some are covered by a spouse's plan or are short-term or temporary employees. This exclusion further adds to the adverse selection process and represents no fringe benefit to those not participating.

---

[7] *Study of the Federal Employees Health Benefits Program*, April 1988, U.S. Office of Personnel Management, Contract No. OPM 87-9027, submitted by Towers, Perrin, Forster and Crosby, Inc., page 1.

[8] *Federal Employee Health Benefit Program: Possible Strategies for Reform*, Congressional Research Service, May 24, 1989, prepared for U.S. Congress, House Post Office and Civil Service Committee, 101st Congress (Committee Print 101-5) p.351

At one time the Federal Government was a trend setter in the benefit area. It pioneered the pension plan, albeit as a way to rid its rolls of the nonproductive; it introduced the current leave program in the 1950's as one substitute for pay (far superior to any leave program offered by industry), while today it shows leadership in neither innovative benefits nor comparable pay.

If the Federal Government seeks to stem the erosion of quality, it must take lessons from the best employers and offer a flexible benefit package that offers a core set of benefits and one that eliminates the adverse selection problems. The Advisory Committee applauds the government's recent initiatives to test work sharing and arrangements for work at home and encourages expansion of these and other innovative approaches to successfully compete in the market.

"Compared to the health insurance provided by other large employers, FEHBP places a heavy burden on employees' pocketbooks."

Dennis Snook, CRS
***Federal Times*, June 5, 1989**

QUALITY AND PRODUCTIVITY OF THE WORK FORCE

A great deal of interest, speculation and study centers on the quality of the Federal work force and how it can be measured. This issue is of great concern because anecdotal stories, impressions, and surveys indicate that the quality of the work force is declining. If what appears to be happening is widespread, the government's delivery of services will suffer further as a result of pursuing a policy of false economy—that is, not paying competitive wages only to pay more in hidden costs.

Information is being developed to document the decline in quality. The Department of Defense employs almost 100,000 scientists and engineers and is attempting to determine if the quality for these occupations is declining. In 1981, DOD studied the recruitment and retention profile in its laboratories and found that it hired as many people as it was losing, however, those leaving were at the GS-12 and 13 journeyman levels and the new hires were at the entry level GS-5 and 7. Thus, it found that the more experienced and highly trained workers were leaving at a time when they could be most productive, yet new hires were recent graduates who had no experience and would require years of training in order to become fully productive.

As a follow up, DOD is examining 25 work force characteristics of scientific and technical personnel that are considered "quality" factors, including those related to education, such as grade point average, and those related to work, such as performance appraisals and awards received. While the study is not yet complete, preliminary results show that of the 15,000 scientists and engineers who responded to the survey, these measures of quality had dropped. The percentage of scientists and engineers who hold the Ph.D. degree has fallen from almost 35 percent of those hired prior to 1958 to less than 20 percent of those hired in 1987 and for engineers from 8 percent to 2 percent during this same period.

In reviewing one of the job related factors of quality, that of the number and frequency of scientific papers completed for publication and presentation at professional meetings, data again indicate that those hired later demonstrated fewer products than those joining DOD in earlier years.[9]

The "quality of workers" issue will be studied on a more comprehensive basis. The Merit Systems Protection Board is undertaking a two-part study to specifically identify who is leaving the Federal Government and at what rate and, secondly, to determine why they are leaving.

Another approach to measuring quality is to determine how output or productivity levels have changed. Although productivity includes a host of factors besides human capital—investment in capital equipment, supervision, office design, technology and other factors—this provides another measure of how well or poorly functions are being carried out and, more importantly, how they have changed over time. Each year since 1968, the Bureau of Labor Statistics has collected Federal productivity data. Fiscal year 1987 statistics include data from 372 organizations within 61 agencies that cover over two-thirds of the Federal Government. Taken over a 20-year period, 1968-87, productivity results are good, increasing at a rate of 1.4 percent per year, on average. Over the last few years, however, the average annual rate of change in output per employee has been dropping and the lowest ever was recorded from 1986-87, the latest data available.

---

[9] Dr. George P. Milburn, Deputy Director, Defense Research and Engineering, Talking Points for Conference on Federal Workforce Quality Assessment, sponsored by Office of Personnel Management and Merit Systems Protection Board, May 8, 1989.

For the 1986-87 period, output per employee year was virtually flat, increasing at a bare .2 percent rate. Of the 28 major functional groups for which data are collected, 12 registered declines, one remained unchanged, and 15 indicated advances.[10] This is in marked contrast to the 20-year average, which shows that only one function performed at a negative annual rate. *This productivity decline represents one of the single most impressive piece of evidence that problems exist in the Federal Government.*

The breakdown in government service is too painfully evident in the savings and loan crisis that will cost the taxpayers some $160 billion dollars. Personnel problems and inadequate pay were contributing factors in the misdiagnosis. Other incidents, including dishonesty, theft, and incompetence have been reported by other agencies and, unfortunately, this list, too, is growing.

"Good pay may not produce good government, but bad pay will surely produce bad government."

"Shame on Ralph Nader" Robert J. Samuelson, *Washington Post*, March 15, 1989

---

[10] See "Federal Government Productivity Highlights, Fiscal Years 1967-87," U.S. Department of Labor, Bureau of Labor Statistics, October 1988.

CONCLUSION

The Advisory Committee finds most regrettable the Federal Government's lack of credibility as an employer among its own work force. Federal employees believe that they had an implicit contract with their employer when they made a commitment to the organization. In recent years, however, the terms of employment have changed for the worse, pay and benefits have eroded, the work environment has deteriorated, and restrictions have been placed on post Federal employment. As a reaction to a combination of these factors, including limitations contained in the "Governmentwide Ethics Act of 1989 (HR 2337) and the "Procurement Integrity Act of 1989," and how they will be interpreted, many long-term, dedicated civil servants are leaving.

The Advisory Committee believes that reform of the Federal Pay Comparability Act is long overdue. The gap between private and Federal salaries has increased steadily since 1978. The Advisory Committee has long advocated a pay system based on local labor market conditions, similar to the system developed over 100 years ago for the blue-collar workers. The Congressional and Administration's agreement to implement a 3.6-percent pay increase in January 1990, while an improvement over the initial 2 percent proposal, is insufficient to cover the erosion of pay and with it the declining quality of the work force. *The Advisory Committee recommends to the President and the Congress that a more meaningful increase be implemented as a signal to the current work force and prospective top caliber candidates that the public service will be a rewarding career and will offer a fair remuneration. Thus, the Advisory Committee recommends an additional 6.4 percent pay increase. Further, it urges the President to include a 10-percent pay increase in his Fiscal Year 1991 budget submission to Congress.*

As stated by Dr. Noel Hinners on resigning from NASA:
"I came to the conclusion that with the lack of action on the pay raise, and the changing of the rules in the middle of the game, it was time to consider a career change."

Washington Post, April 25, 1989

Catchup pay increases have been used in the past to recognize pay deficiencies. Pay adjustments were phased in during 1967, 1968, and 1969 as a three-step approach to raising Federal salaries to comparable levels in the private sector, based on the BLS PATC survey data. In 1967, the pay increase of 4.5 percent was made effective in October; the 1968 increase was effective in July and provided for increases ranging from 3 to 9 percent, or one-half the difference between industry and government, based on the gap by grade; and in 1969, the increases varied by grade, 3 to 10.8 percent, depending on the salaries found in the BLS survey. The Advisory Committee believes that the catchup increases necessary today are as important as they were 20 years ago and urges a similar phase-in approach.

The Administration and Congress are also urged to develop a locality based pay system but the Advisory Committee cautions that, if such a system is implemented, wages should be adjusted by the amount indicated by the pay data. Failure to adhere to the findings will result in the very same situation we now face, eroding pay and the substitution of political decisions in place of objective ones. Tearing down the current pay system and building a better one is necessary but only if the new one produces consistent and reliable adjustments.

"Will the last qualified employee leaving government service please turn off the lights?"

"Ethics vs. Government Service" Editorial, Wall Street Journal, April [illegible], 1989

APPENDIX 1
ORGANIZATIONS APPEARING BEFORE THE ADVISORY COMMITTEE ON FEDERAL PAY

July 25, 1989

Federal Employees Pay Council

American Federation of Government
Employees—
John Sturdivant, President
Peter Tchirkow, Statistician

National Federation of Federal
Employees—
James Peirce, President

National Treasury Employees Union—
Robert Tobias, President

Other Organizations

Association of Scientists and
Engineers of the Naval Sea Systems
Command—
Janet Lockerby, Vice President

Classification and Compensation
Society—
E. Michael McCarthy, President

Federal Executive Institute Alumni
Association—
Adele Derby, President

Federal Managers Association—
Paul Trayers, Executive Director

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and
Helpers of America, Public Employee
Division—
Dr. Hal G. Lewis

National Advisory Commission on
Law Enforcement—
Patrick Mullen, Deputy Staff
Director
Regina Sullivan, Bureau of
Prisons (detailed)

National Association of Government
Employees—
Edward Murphy, General Counsel

Senior Executives Association—
Dr. Richard Strombotne, Executive
Board Member

The National Commission on the Public
Service—
L. Bruce Laingen, Executive
Director

The Wyatt Company—
Howard Risher, Principal

U.S. Forum of Administrative Law
Judges—
Judge Bruce L. Birchman, Legislative
Chairman

Patent Office Professional Association—
Ronald Stern, President

Robert K. Phelps, Federal Employee

APPENDIX 2
SUMMARY OF ORAL AND WRITTEN STATEMENTS BY REPRESENTATIVES OF UNIONS, PROFESSIONAL ASSOCIATIONS, AND OTHERS

The following summarizes and highlights the statements presented to the Advisory Committee on Federal Pay at its July 25 meetings.

The Wyatt Company. Howard Risher, Principal, was invited to provide an overview of private sector practices based on surveys The Wyatt Company has participated in with the Advisory Committee and a study, now completed, for the Office of Personnel Management. Wyatt has found that firms develop certain concepts and principles that drive their compensation plan. The firm's objectives are generally to stay competitive with the market and to pay employees based on the quality of work force the firm believes it needs to operate profitably. Large companies with multiple locations generally have separate salary structures for exempt, nonexempt, and their blue-collar work force. Pay for nonexempt and blue-collar employees is based on local labor market conditions. The study, conducted for OPM, reviews practices of firms with 25,000 or more employees to determine how pay is established and is expected to serve as a basis for developing a legislative proposal.

American Federation of Government Employees. Over the last 5 years there has been a dramatic increase in Federal legislation to correct pay problems on a narrow, occupation, specific agency, and geographic basis. This approach reflects the lack of any overall coherent Legislative and Executive Branch pay policy. The special pay rate provisions currently cover 150,000 employees and, according to OPM, could result in 350,000 covered by 1992. "This is clear evidence of the inadequacy of General Schedule pay levels." AFGE endorses the elimination of the pay gap and recommends a 5-percent pay increase to keep pay current with the cost of living and an additional 4 percent as a catchup. It supports a locality pay system modeled after the current Federal Prevailing Rate Advisory Committee. AFGE also favors the formation of a new tripartite National Committee to provide oversight of any new pay system, which should include a strong dispute resolution authority.

National Treasury Employees Union. There is a deepening frustration over the unresolved pay issue that has turned to anger and outrage. "We will face not a quiet crisis that silently erodes the pillars of public service, but rather a thundering collapse of the entire structure." The Federal Government is consuming its human resources and total disaster has been delayed because the core of career employees who entered Federal Service prior to this decade will stay until retirement. As an immediate solution, NTEU recommends an annual salary increase of 6 percent, or 3 percent above inflation, whichever is higher, until comparability is achieved. It also recommends agency authority to implement, without OPM approval, special salary rates for employees in high cost areas. For the long-term, collective bargaining, or collective participation over pay matters must be introduced, the NTEU states.

National Federation of Federal Employees. The pay comparability system has failed resulting in hundreds of thousands of employees leaving the government. The loss translates into high severance pay and retraining costs and lost productivity. Compounding the problem is the erosion in the value of fringe benefits. "Rising health insurance costs (coupled with reduced benefit levels) and an added tax burden on annuities are just two examples of reduced pay and benefits employees and retirees can expect." NFFE believes that collective bargaining is the most appropriate way for setting wages and that locality pay, proposed for white-collar workers and used for blue-collar workers, is not satisfactory because Congress has continually capped all wage grade employees' pay increases at the same percentage granted to General Schedule employees regardless of the pay survey results. The only acceptable geographic pay system would establish a nationwide pay floor and would then permit unions to negotiate increases for some or all positions and locations as needed.

National Association of Government Employees (affiliated with the Service Employees International Union) Thus far, President Bush's pay proposal for only a fraction of the top levels of government has ignored the pay crisis of the career civil servants who work in the streets controlling drug criminals, in VA hospitals, shipyards, and prisons. The government's pay policy is penny wise and pound foolish because it serves as a training ground for employees to gain experience before moving on to more attractive jobs in business or State and local governments. In the VA hospitals represented by NAGE, staffing shortages have forced agencies to adopt a mandatory overtime policy. NAGE supports phasing in of the pay gap and an end to the pay crisis.

International Brotherhood of Teamsters, Public Employees' Trade Division "Five, four and three years ago many of us were testifying as if it made a difference, as if the statistics on the private/Federal wage disparities would cause someone to sit up and take the economic condition of General Schedule workers seriously." In the past 2 years, the groups have indicated no faith in the current process and instead look for new systems, locality pay, collective bargaining, pay experiments, or other alternatives, according to the IBT. IBT urges the Committee to advocate the best of industry practices, which show an awareness of human capital and the importance of using it wisely. In the Federal Government, as in industry, worker participation can increase productivity and efficiency.

Classification and Compensation Society For some years, the Society, like the Advisory Committee, has been a strong advocate of locality pay and now many groups have endorsed it as an alternative pay system. The Classification and Compensation Society and the International Personnel Management Association, Federal Section, developed a position paper advocating locality pay endorsed by a representative group of agency personnel directors. "The Society would urge you, in your message to President Bush, to encourage him to publicly ask the battered bureaucrats to continue their financial sacrifices, if that should be necessary for the good of the country. . . . Call on the President to at least grant those battered bureaucrats a token of his esteem. Would a five percent increase this year be an appropriate symbol to acknowledge a just debt and begin the long slow process of liquidating it?"

Senior Executives Association Federal employees are aware that they are being left behind in this seventh year of unprecedented peacetime expansion of the economy. The Federal Government is honoring its commitment to back at $150 to $200 billion the savings and loan scandal and then not fulfill the same commitment to its employees. Examples of the pay problem can be seen in the turnover among Presidential Rank Award winners. About 21 percent of the annual winners have left government to take a better paying job or to retire and another one quarter are actively seeking jobs outside the government. Further, 75 percent of the executives indicate that the quality of mid level employees in their agency is not adequate to replace the senior managers who will be retiring in the next 3 years.

In summary, SEA has the following recommendations:

1. Support the President's proposal to increase pay of judges and senior executives.
2. Close the comparability gap over a three year period, starting October 1, 1990.
3. Close the pay comparability gap for senior executives.

4. Eliminate the real overlap in salaries of ES-1 senior executives and GS-15/GM-15 managers.
5. Set the pay cap for the General Schedule at Executive Level IV.

Federal Managers Association. Over the past year a number of events have called Federal pay issues to the public's attention, including the proposed and defeated 51-percent increase for Congress, release of the National Commission on the Public Service reports, and President Bush's proposal to raise pay for the top jobs by 25 percent. The pay problems will become magnified with the demographic changes projected. The FMA offers four actions by the President and Congress:

1. Provide a minimum 9.1 percent increase for Federal workers in FY 1990.
2. Raise the pay levels for members of Congress, the judiciary and executive branch officials.
3. Establish a five-year schedule for attaining pay comparability between the Federal Government and the private sector.
4. Explore locality pay as a pay-setting mechanism that would replace the General Schedule.

The Forum of the U.S. Administrative Law Judges. The organization represents 1,000 judges in GS-15-18, about 700 of whom are in the Social Security Administration. The Forum seeks legislation to remove Administrative Law Judges from the General Schedule for pay purposes only and establish a judicial pay scale or compensation at Executive Levels IV and V. The Forum points out that, unlike pay practices for those in the Senior Executive Service, Administrative Law Judges are not eligible for bonuses because of the appearance of impropriety and infringement on their decisions. Currently, about 60 percent of the judges are eligible for early or regular retirement and the pay disparities with the private sector hinder recruitment and retention of competent replacements.

Association of Scientists and Engineers of the Naval Sea Systems Command. "Our engineers and scientists are engaged in design, engineering, research and development work that is at the cutting edge of important evolving technology in areas of advanced materials, complex machinery, electronics, battle force engineering, computer aided design, and automated fabrication processes which are applied to construction of ships and war fighting systems." The pay gap is adversely impacting on the agencies' mission. Of the 64 NAVSEA entry level engineering positions offered to recent graduates, only 22 were accepted and higher pay was repeatedly cited as the reason for declining the position. The agreed upon 3.6-percent increase should be granted to all Federal employees, including those on special rates.

Federal Executive Institute Alumni Association. "It is our Association's view that a decoupling of the linkage of Congressional pay to that of the Federal employee is needed to accomplish and maintain pay comparability." A survey of the FEIAA members shows that 71 percent believe their agency is experiencing a brain drain caused by the erosion of pay and benefits, the same reason almost half said they would not encourage young people to seek a Federal career. FEIAA cited a number of severe recruiting and retention problems, including those in the National Aeronautical and Space Administration, the Food and Drug Administration, the National Institutes of Health, and the Chief Financial Officer Council. Regional pay differentials are recommended to solve staffing problems, including those of the Federal Bureau of Investigation, Federal Aviation Administration, and the Food and Drug Administration. Low entry level salaries are cited for causing staffing problems in two agencies, the Department of Veterans Affairs, and the President's Council on Integrity and Efficiency.

The National Commission on the Public Service (Volcker Commission). The Commission's report, *Leadership for America: Rebuilding the Public Service*, calls upon the

President, the Congress, and the public to implement a fair Federal pay system. Key people throughout the government are leaving and qualified replacements are not seeking Federal employment. The Commission's recommendations to improve pay are designed to reverse the erosion of quality of the Civil Service. Specifically, it recommends that uniform nationwide rates of the General Schedule be adjusted to take into account real differences in living costs and labor market pressures. "We welcome the President's pay proposals for executives and urge that your report address the link between these initiatives and the need to improve the General Schedule."

National Advisory Commission on Law Enforcement. The Commission was established by the Omnibus Antidrug Abuse Act of 1988 to study compensation comparisons for law enforcement employees in 33 job series compared to those in State and local entities. These 33 jobs involve approximately 47,000 persons, although the study will focus on the five occupations for which the vast majority of incumbents are covered by special retirement provisions, specifically criminal investigators (27,639), correctional officer (4,959), border patrol agent (3,157), U.S. probation and pretrial service officers (2,600), Uniformed Division of Secret Service (1,010), U.S. Park Police (750), U.S. Marshalls (717), correctional institution administration (545), and game law enforcement (271). In addition to surveying pay and benefit practices in all State and local governments, field interviews are planned to obtain subjective information on staffing/recruitment, retention and morale. The report and recommendations are expected to be released by the end of the year.

Patent Office Professional Association. The impact of the pay gap can be seen in the 60 percent attrition rates of new hire patent examiners within a 4 year period. "The time taken away from work by senior patent examiner(s) to constantly train the "revolving door" arrival of new examiners diminishes agency productivity." The Association advocates pay increases based on the comparability gap by grade, not across the board increases.

Robert K. Phelps, Federal Employee. "I come before you because I am flat ass busted. The plain and simple fact is that most federal salaries are not high enough to meet the cost for housing, food costs and other basic living costs in the Washington, DC area. ... The 25% pay raise would allow me and other people living on the edge of poverty to stay in our homes and not wind up sleeping on the streets."

The following are summaries of statements submitted to the Advisory committee in writing:

Non Commissioned Officers Association of the United States of America. Basic pay and allowances should be increased a minimum of 10 percent. The pay compression between senior NCO's and Petty Officers and the basic service member has continued and needs to be addressed. Additional annual increases of 3 to 4 percent should be given until the compression no longer exists. Increases or permanent changes of state (PCS) authorizations are required to more closely correspond with actual expenses incurred.

Federal Bar Association. Recent law graduates entering the private sector average $36,775 compared to those entering the Federal Government, $22,907 (GS-9) or $27,716 (GS-11), if available. The pay gap for attorneys is well above the overall average of 26 percent. For example, the gap is 39 percent for labor attorneys, 36 percent for natural resource attorneys, and 51 percent for those practicing taxation. Additionally, Federal attorneys' highest nonsupervisory grade is GS-14, and a mechanism should be developed to increase salaries beyond this level.

Naval Civilian Managers Association. The NCMA strongly supports the plan proposed by the Federal Managers Association, which recommended the elimination of the pay gap by 1995. The plan would provide for an annual 8-percent increase, with the assumption that private sector salaries are limited to 3 to 4 percent per year. NCMA members are frustrated by the Performance

Management Recognition System, its lack of meaningful financial awards and subjective selection of award recipients and urges reform of the system.

Kenneth Strawberry and George J. Mattis, Federal Employees in Supergrades. The President's proposed legislation to raise the executive salaries overlooked the need to remove the pay cap on the 1,000 people in the General Schedule 16, 17, and 18 grades, known as the supergrades. Currently, the supergrades are linked to Level V of the Executive Schedule and are capped at $75,500, although the top salary, if uncapped, is $86,682. Thus, in many cases employees are receiving $5,560 less than they should. Although there is no formal organization for the supergrades, the Advisory Committee is urged to recommend removing all pay caps through legislation and begin paying the full amounts.

APPENDIX 3
PAY AGENT REPORT

Each year for the past several years, the Advisory Committee has commented on the need to change the sequence of events leading up to the report it transmits to the President. Currently, the Bureau of Labor statistics conducts its salary and wage survey from January to March each year, compiles the data, and delivers the pay data to the Office of Personnel Management to develop the pay lines. This year, the salary information was delivered to OPM on August 8. The Office of Personnel Management sent the pay line and pay gap information to the Federal Employees Pay Council, other employee associations, and the Advisory Committee on Federal Pay in a letter dated August 14. The OPM letter asked for comments by August 18 to be included in the final Pay Agent document.

Under the Federal Pay Comparability Act of 1970, the President is required, if it is his intention, to submit an alternative pay plan by September 1 in order to recommend a pay increase less than the full comparability gap, now 28.6 percent. Earlier in the year, the President's Fiscal Year 1990 budget proposal for a 2-percent increase for white-collar workers was modified to 3.6 percent to coincide with the Congressional intent to provide for the same increase to white-collar employees as the uniformed military service.

When the 1970 law was enacted, the government operated on a different budget cycle, which extended from July 1 to June 30, and the steps outlined in the 1970 Pay Act were appropriate for that schedule. In 1976, the cycle was changed, and the fiscal year begins October 1 and ends September 30. The 1970 Act was not changed to reflect this new budget cycle. In recent years, the pay discussions have already been concluded by the time the Pay Agent and the Advisory Committee reports are issued. The Advisory Committee believes that it is well past the time to reform the pay setting process but, if that is not done soon, Congress is urged to rethink the calendar of events to make the process and pay decision meaningful. For example, BLS data gathering activity could be accomplished in the fall and the Pay Agent and Advisory Committee reports be issued in the spring. As another alternative, these reports issued now could be used by the President and Congress for the October 1990 or January 1991 pay increase. This however is a far less acceptable approach because of the lag in time between the salary data collection and implementation. The Advisory Committee has called attention to this timing problem and in this year's report recommends that a pay increase of 10 percent be included in the President's 1991 budget message to Congress.

In funding the Advisory Committee's activities for Fiscal Year 1989, the Senate/House Appropriation Committee Conferees attempted to correct one of the timing problems by directing the Advisory Committee to make its report available to Congress at the same time it is transmitted to the President and the Committee is following this directive.

The 1989 BLS Professional, Administrative, Technical and Clerical Survey reflects changes to include more industries and additional occupations. The 1989 survey includes service producing establishments while the 1988 survey was confined to nonservice industries. The 1989 results are combined with updated information from the goods producing establishments studied in 1988.

New survey occupations introduced in 1989 include personnel specialist, personnel supervisor/manager, medical machine operating technician, and registered nurse II specialist. The personnel specialist series replaces the job analyst occupation surveyed in previous years. Because of the changes in the survey since 1987, year to year changes cannot be compared. BLS notes however, that the Employment Cost Index wage and salaries for all white-collar occupations, excluding sales, increased 4.1 percent between March 1988 and March 1989.

For the past several years, OPM, in developing its paylines, excluded those Federal employees on special rates from the private sector data collected by BLS, specifically engineers. Excluded from the Federal salary data are all workers on special rates. Either including or excluding all on both sides of the data base is estimated to change the pay gap by about 1 percent. The pay gap ranges from a low of 20.04 percent at GS1 to a high of 36.69 percent for GS15.

APPENDIX 4
FEDERAL EXECUTIVE BOARD REPORTS

New York City FEB

Occupational Series Code 1169—Revenue Officers. The 1169 series is unique to the Internal Revenue Service who reports critical staffing problems.

A Revenue Officer is responsible for collection of revenues due the government. They are the bill collectors for the IRS, with authority to seize and dispose of taxpayers' property, both real and personal.

Last year, after a costly advertising campaign and on campus recruitment efforts, 16 GS-5 and 28 GS-7 applicants were hired. We then lost 14 GS-5 and 10 GS-7 employees during that very same period, with most of the losses occurring during the training phase of their employment. Many start looking for another position when they find themselves failing our training program. Most, if not all, find higher paying jobs in the private sector.

We are presently losing most of our new employees and this, coupled with 27 losses above the journey level, will seriously impact on our ability to deliver our program now and into the future. It may also result in a loss of collected revenue to the government.

Code 993—Social Insurance Claims Examiner. This position is unique to the Social Security Administration and the title of the position is Benefit Authorizer GS-4/5/7/8.

We are losing the best and brightest of our workforce. During the period of 7/1/87 to 6/30/88, the agency lost *111* employees from the GS-993 series. This represents 11 percent of our total GS-993 work force. Of these 111, 69 had over 10 years of service, and 31 had 5-10 years of service. In percentage, 90 percent of our losses had over 5 years of service and 62 percent had over 10 years of service. These types of losses—the years of experience, the attitude, the work ethic—cannot be compensated. A demoralizing statistic to managers is that 62 (or 56 percent) of these losses were quits for pay.

The summary of all costs in order to compensate for staffing shortages follow:

Overtime	$469,463.89
Work Transfers	149,225.10
Training	889,588.81
Supervisory personnel office assistance	6,894.26
Advertising	732.74
Total	$1,515,904.80

Inability to recruit quality employees will create a dearth of candidates for promotion into managerial and higher level technical vancancies in years to come. We will no longer have a pool of educated and intelligent employees to develop for leadership positions.

Code 1863—Food Inspectors. The Food Safety Inspection Service (FSIS) employs over 100 food inspectors in New York City and its surrounding areas.

Although OPM has referred numerous names to us for appointment to positions in New York City, we have experienced skyrocketing declinations to our offers. For example, in 1986 the overall declination rate was 44 percent. In 1987, the declination rate soared to 1 percent. This rate is continuing to climb even higher this year. Repeatedly, the reason cited for declining our offers is low salary.

The salary levels have had an effect on our vacancy rate and the composition of our work force. The vacancy rate continues to increase as reflected by 12.6 percent in 1985, to 23.1 percent in 1986, to a present rate of 43 percent. When we consider that 40.7 percent of our work force in New York City are 50 and older, we are going to continue to have an increased need for people.

Los Angeles FEB

Desperate Federal employers attempted to go outside of Los Angeles to recruit candidates from Arizona, New Mexico, Texas, Washington, Oregon, Colorado, Utah, etc., only to find that costs of recruiting outside Los Angeles not only produced few recruits who would accept employment in a costly location, but many of those candidates who did accept employment returned to their home state under hardship transfers because of cost-of-living conditions in Los Angeles.

When Federal agencies spend enormous amounts of money in paid advertising and allocate additional resources to recruit on top of paid advertising, and still show few or no recruits, we clearly have a problem. Examples of these problems include: (1) one agency tried to fill 15 positions, received 100 inquiries but only three applications were received; (2) another agency tried to fill 64 positions and ran 44 announcements and ads that resulted in three applicants—one of the three applicants withdrew his name because of the high cost-of-living, a second found a better paying job and the third didn't qualify.

Northern Metropolitan New Jersey FEB

A Social Security Administration office was unable to fill more than half its professional interviewing vacancies in 1987 despite extensive newspaper advertising. Three hundred and forty people expressed interest in the position. Only 145 appeared for the OPM test, 34 passed the test, but 8 failed the interviews and 8 declined the interview due to the low salary. Eighteen applicants were offered the position, 5 declined, 2 left during training, which left only 11 employees.

A Treasury Department Agency in Essex County received 800 applications for telephone representative positions, however, 600 applicants were not qualified. One hundred and fifty of the remaining 200 applicants passed the interview and the position was offered to 145. Ninety applicants declined and the agency filled 55 of their 80 positions during FY 1988. As of June, 35 remained. Only 4 percent who applied for the positions were currently employed. The agency had to use higher graded technical employees in order to properly service the public.

Fifteen agencies in Northern and Central New Jersey had 227 clerical vacancies as of March 31, 1988. This represented 14 percent of their total authorized clerical staffing. Despite special salary rates for clerical employees, 73.2 percent of the clerical employees who left during FY 1988 in these fifteen agencies cited low pay as the cause. Several agencies have referred to the clerical grades of GS-4 and 5 as the "turbulent grades."

APPENDIX 5
TECHNICAL NOTES

Table 1 is an historical chronology showing the pay adjustments recommended by the Pay Agent, the actual increases implemented, and Congressional action taken. As table 1 shows, the amount recommended by the Pay Agent and the increases actually implemented occurred in January 1971, October 1972, October 1973, October 1976, and October 1977. In October 1972 and October 1977, however, a strict interpretation of comparability called for a range of adjustments to be implemented, which was not done. Thus, out of the 18 adjustments made since passage of the 1970 Comparability Act, only four (six if 1972 and 1977 are included) have been made, and these in the early years. Since October 1977, Congress increased the President's alternative pay plan by .5 percent in 1984 and by 1 percent in 1987.

It should also be noted that, beginning in 1984, the Advisory Committee recommendations varied from the Pay Agent's findings. These increases were based on the Bureau of Labor Statistics' Employment Cost Index for white-collar workers' wages and salaries in the private economy. In 1987 and 1988, catchup amounts were recommended. If the Advisory Committee's recommendations had been followed, no pay gap would exist in 1989.

Table 2 shows the changes in wages and the Consumer Price Index from 1978 to 1989. It presents the overall average increase from the BLS Survey and Professional, Administrative, Technical, and Clerical Salaries, the BLS Employment Cost Index, the CPI, and Federal increases actually granted. The average increase in the PATC survey matches or closely approximates the increase in the ECI series for wages and salaries. Federal white-collar pay increases fall below all measures.

Table 3 presents the percent of increase necessary to meet private sector wages. As shown, the overall increase varied by General Schedule grade and the gap is shown after the increases have been made. For example, for GS-1, the 1987 Pay Agent report showed that a pay increase of 21.82 percent would be necessary to meet private sector wages and, after a 2-percent increase was granted in January 1988, a gap of 19.82 percent still remained. The current 1989 gap for the overall General Schedule is 28.62 percent.

Chart 1 graphically shows the decline in purchasing power of Federal pay and the relationship of purchasing power for wages and benefits of other groups. Data for this graphic were included in the Congressional Research Service report.

Chart 2 shows that Federal pay increases are well below the private sector and were one-half those for State and local governments in the 1982-88 period.

Table 2. Wage and Consumer Price Index Increases, 1978–89

	[illegible]	[illegible]	1980	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PATC Survey	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	NA	2.0-4.5	NA [1]
Employment Cost Index												
Private nonfarm (excluding sales)												
Wages and benefits	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4.2	3.3
Wages and salaries only	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	3.6	3.9
White collar workers (excluding sales)												
Wages and benefits	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4.2	4.8
Wages and salaries only	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	5.5	4.5
CPI urban wage earners and clerical workers	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	3.7	4.0
Pay increases granted Federal white collar workers	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4.7.0	4.4.1

[illegible] increases in 1980.

[illegible]

[illegible]

[1] NOTE: [illegible]

Table 1. Chronology of General Salary Increases, January 1971 to January 1989

January 1971	5.96%	None	5.96%	None	Comparability measurement in effect at time called for no variation by grade.
January 1972	6.6	None	5.5	None	Economic Stabilization Act reduced increases below comparability.
October 1972	5.14	None	5.14	None	Strict comparability called for increases from 3.5 to 7.9 percent. Court overturned postponement to January 1973 proposed by President.
October 1973	4.77	4.55-5.25%	4.77	4.55-5.25%	Congress override alternative plan delay to December.
October 1974	5.52	5.46-5.59	5.52	5.46-5.59	Congress override alternative plan delay to January.
October 1975	8.66	None	5.0	None	Alternative plan not overriden.
October 1976	5.17	4.24-1/8.98	5.17	4.24-8.98	
October 1977	7.05	None	7.05	None	Strict comparability called for increases from 6.26 to 9.8 percent. Uniform percentage increase agreed to by Pay Agent and Federal Employees Pay Council.
October 1978	8.4	6.14-1/13.27	5.5	None	Alternative plan not overridden.
October 1979	10.38	8.8-1/15.43	7.0	7.0-2/9.89	Alternative plan not overridden.
October 1980	3/12.69	10.2-1/20.91	9.1	9.1-4/10.1	Alternative plan not overridden.
October 1981	15.1	12.08-1/23.33	4.8	None	Budget reconciliation provided increase.
October 1982	5/17.1	14.98-1/31.07	4.0	None	Alternative plan not overridden.
January 1984	21.5	17.82-1/36.25	4.0	None	President's alternative plan provided 3.5 percent; however, in April, Congress passed the Omnibus Budget Reconciliation Act of 1983, which provided for an additional .5 percent.
January 1985	18.3	17.01-21.66	3.5	None	Alternative pay plan not overridden.
January 1986	19.15	18.35-20.85	0	0	Alternative pay plan not overridden.
January 1987	23.79	22.20-28.94	3.0	None	President's alternative pay plan provided 2.0 percent. Congress overrode it by passing a 3-percent increase.
January 1988	23.74	21.57-28.86	2.0	None	Alternative pay plan not overridden.
January 1989	26.28	24.36-31.76	4.1	None	Congress and President agreed to amount before alternative pay plan announced.

1/ Maximum increase permitted under [illegible] ceiling.
2/ Increases in excess of 7 percent given only to [illegible]
3/ 13.46 percent, assuming ceiling is raised.
4/ Increases in excess of 9.1 percent given only to [illegible]
5/ 18.5 percent assuming ceiling is raised.

NOTE: Historically, wages for blue-collar Appropriated Fund employees [illegible] wage surveys conducted by both union and agency representatives. For Nonappropriated Fund employees [illegible] Although surveys have been conducted, blue-collar workers have been subject to the same wage cap [illegible] Congressional action [illegible] October 1978. Where [illegible] show lower increases than the cap, the lower increases were implemented.

Prior to 1980, military pay was linked to white-collar increases. [illegible] By October 1982, the link was re-established. In January 1985, however, the military [illegible] percent pay increase in October 1985 [illegible] military received another [illegible] percent and the civilian work force pay was frozen at the January 1985 level until January 1987. [illegible] a 3 percent pay increase in January 1987, 2 percent in January 1988, and 4.1 percent in January 1989. [illegible]

Until 1982, the Advisory Committee's recommendations coincided with the Pay Agent's report. However, in its August 1984 report, the Committee recommended 3.5 percent and subsequently 4.[illegible] percent in 1985, an average of 4 percent in 1986, [illegible] percent in 1987, and [illegible] percent in 1988.

SOURCE: "A Decade of Federal White-Collar Pay Comparability, 1970-1980," and Advisory Committee on Federal Pay reports.

Table 3. Percent Increase of General Schedule Salary Scales Required for Comparability With Private Sector, 1/ Selected Grades and Dates

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January—					
1971	0	0	0	0	0
1972	1.1	1.1	1.1	1.1	1.1
October					
1972	1.63 above	.83 above	.38	3.70	0
1973	0	0	0	0	0
1974	0	0	0	0	0
1975	1.60	2.40	.80	4.50	3.4
1976	0	0	0	.80	0
1977	.60	.73 above	.18 above	7.80	0
1978	.47	.86	2.61	.17	[illegible]
1979	0	1.51	2.8	[illegible]	[illegible]
1980	0	3.1	2.9	10.8	3.1
1981	7.56	6.05	7.08	17.68	9.8
1982	12.9	11.88	13.83	20.03	14.9
1983 2/	16.8	14.0	14.5	33.0	19.8
1984 3/	13.47	13.08	13.83	19.13	14.28
1985 4/	18.40	18.38	18.96	20.87	19.15
1986 5/	20.83	18.90	19.26	25.18	20.08
1987 6/	19.43	19.22	20.58	26.65	21.13
1988 7/	25.45	24.39	25.36	31.76	28.28
1989 7/	29.04	28.00	28.30	36.09	28.63

1/ Based on Step 1 rates, comparability as computed by Pay Agent on the basis of BLS data for the private sector as of April of each year in which Federal pay increases were effective in October (as of preceding June in case of Federal increases effective in January). Gaps apply only to the year in which they are shown and are not cumulative.

2/ After a 4-percent across-the-board increase granted in January 1984 (not annualized).

3/ After January 1985 pay increase of 3.5 percent.

4/ Gap after no (January 1986) increase.

5/ Gap after January 1987 increase of 3.0 percent.

6/ Gap after January 1988 increase of 2 percent.

7/ Current gap as of August.

SOURCE: Advisory Committee on Federal Pay's report "A Decade of Federal White Collar Pay Comparability, 1970–80," updated from Pay Agent's annual reports.

SUMMARY OF 1989 REPORT

Mr. DUGGAN. We endorsed the Congress's 3.6 percent pay increase last year, but recommended that the President consider placing a 10 percent pay increase in his 1991 budget message to the Congress.

We stated that we felt a substantial increase was necessary to send a strong message to the federal government, that it is serious about the need to recruit and retain well-qualified employees.

The amounts actually required to meet the average comparability gap, according to figures provided by the Administration, range from a low of 20.04 percent at the GS-1 level, to 36.69 percent at GS-15 positions, and averaged 28.62 percent. So we hoped for some progress.

The Advisory Committee, along with other bodies, including unions, professional organizations, believe that a system based on local labor market conditions is the only fair long range approach. I am happy to say that, from the day I became chairman in 1984, I have advocated a locality pay system. This dates back to a time when it was not all that popular, or in the language. In fact, there were shudders, I can recall, Mr. Chairman, on the day that I was sworn in as chairman of this committee, when I mentioned locality pay as being acceptable to the people back home. But since then it has been received favorably.

We understand now there are bills pending—House, Senate, the Administration is going to have its own bill—and we genuinely hope that 1990 will produce legislation to begin phasing in a locality pay system.

Currently, about 189,000 of the white collar general schedule are under special rates program. This is nearly 14 percent of the work force, and agencies still believe that even this is inadequate to meet their personnel requirements.

Because of the critical nature of the pay issue and pay reform this year, our Committee is scheduling its meetings with employee unions and professional associations on April 24. In addition, we are planning to meet in at least three cities outside Washington—Boston, St. Louis, and San Antonio—which are representative of sizable contingencies of federal employees on a geographical basis.

We hope that these meetings will be constructive and highlight the problems that the federal compensation program is having, and we want to heighten public awareness of the contributions federal workers make in their communities.

The Advisory Committee supported and was pleased that Congress took steps to pass the Pay Ethics Bill which grants federal executives pay increases as well. This we feel is a necessary first step in restoring lost earnings.

FISCAL YEAR 1991 BUDGET REQUEST

If you like now, Mr. Chairman, I will turn to our budget request.

We are requesting $207,000, which represents a $2,000 increase over Fiscal Year 1990, or a one percent increase. As the current budget shows, we are operating with $205,000 in Fiscal Year 1990. This sum covers all operating expenses, salaries and travel allowance of staff and committee members, when they are on Committee business, as well as rent and miscellaneous costs of our headquarters office.

The Committee has always exercised financial restraint, and it intends to continue this policy in the future. These funds cover merely our bare necessities.

I would be happy to answer any of your questions, Mr. Chairman.

Mr. **Roybal**. Thank you, Mr. Duggan.

COMPARING FEDERAL AND NON-FEDERAL PAY

When you start making the comparisons between the federal sector and the private sector, do you also include state and local governments?

Ms. **Tanner**. At the present time, the law—The Federal Pay Comparability Act of 1970—specifically excludes state and local government employees. However, the proposed pay bills that are currently being introduced in the House and Senate do include state and local governments.

I believe that there is a feeling now that state and local governments and the salaries of employees are comparable and perhaps above rates currently paid to federal employees, and that they should be included as part of the comparability process.

Mr. **Duggan**. We have recommended inclusion of these data to base our recommendation on through the years.

Mr. **Roybal**. But, up to the present time, the recommendations that you make reflect a true comparison between the private sector and the federal jobs? Is that not a correct statement?

Ms. **Tanner**. We believe that the survey conducted by the Bureau of Labor Statistics accurately reflects the wages in the private sector that are compared to the federal government's.

Mr. **Roybal**. Now you are also suggesting, then, that in that comparison, the state jobs be included?

Mr. **Duggan**. Correct.

LOCALITY PAY

Mr. **Roybal**. Where does the locality theory come in?

Mr. **Duggan**. The locality theory appears to us to be a means of ultimate fairness. In acceptance by the public, when it is recommended that federal employees get substantial pay increases. It appears to us—and if you will permit me—the initial resistance to any such suggestion that the committee encountered—I am going back six years now—was that it would mean automatic pay cuts for people in the federal work force, but that simply cannot be demonstrated. In many instances, it would result in increased pay. In some labor markets, very likely, there would be a reduction. We can appreciate that some of the lower paid states, for instance, would be affected thus.

But the unions which initially resisted the suggestion, professional organizations, members of Congress themselves, the Pay Agent, the Administration has come around to this point of view, that it is simply a matter of equity and of public acceptance. Locality pay is saleable to the people back home, if you want to view them as the ultimate employers of the federal employees.

I think there is a misconception, Mr. Chairman. I found this at the outset. I come from St. Louis, Missouri. The most frequent expression volunteered to me by businessmen in my home community was that federal workers were overpaid already, and I think it can be demonstrated that this is simply not the case. But it can be demonstrated more effectively by breaking it down and showing area by area and applying the local rates.

BENEFIT COMPARISON

Mr. ROYBAL. What I have heard more than anything else is that federal employees get better benefits, and that, in so doing, it enhances their overall pay. Do you include employee benefits in the computations that you make?

Ms. TANNER. No. Currently, the 1970 Pay Act specifically relates only to salaries paid. Benefits are not included, but there have been a number of studies that have tried to compare total compensation in the federal government compared to the private sector, taking into account salaries and benefits as well.

Of course, it does depend on who you include in your survey sample. The surveys that have been done by Hay, for example, have looked at total compensation and have found that, based on their survey samples, that benefits and pay were still behind the private sector, if you took pay and benefits together.

Of course, in some areas, you might find differences, and, of course, as I said, it depends on the sample of private firms you use. If, in fact, you use firms that could not be conceived as being comparable to the federal government's for example small firms, then, of course, you could perhaps make that charge. But if you are looking at substantial companies with a long history and a substantial number of employees, then you would find that the federal benefits are not out of line.

RECRUITMENT AND RETENTION PROLLEMS

Mr. DUGGAN. Mr. Chairman, in the six years that I have conducted hearings of federal work force organizations, unions and professionals who choose to come before us—and they average about 13 different groups at our annual hearings—I found it very persuasive listening to these people, argue that retention and recruitment, particularly in skilled occupations, is a very serious problem. That is one of the objectives of our committee, too, to overcome this.

These people are very conscientious. They are not hostile in any sense, but I regret to say that, in these six years, we have not made the progress that we had hoped to make, and, if our recommendations had been accepted, very modest though they might be—4 percent here, 5 percent here, and so on—we would have overcome this gap.

If you go out into any locality, and you say, "Did you know federal workers are paid 28 percent less than the person in the private sector?", you are likely to get disbelief. But bear in mind now that these figures are provided by the Bureau of Labor Statistics itself.

The figures are channeled to us through the Pay Agent—the Pay Agent is the Administration's own representatives, the Director of

OMB, the Director of OPM, and the Secretary of Labor. So we are not in a position to quarrel with their findings.

Mr. **Roybal**. Mr. Skeen?

PAY GAP

Mr. **Skeen**. Thank you, Mr. Chairman.

Mr. Duggan, last year the gap was something in the area of, say, 26 percent; now it is 28 percent.

Mr. **Duggan**. Right.

Mr. **Skeen**. So it is slowly expanding.

Mr. **Duggan**. We thought it came over rather dramatically, and I cannot claim credit for this, but we do say the "Bottom Line on Federal Pay, The Gap Became a Canyon," and I think that is generally acknowledged.

Mr. **Skeen**. These days and times a little dramatics, but——

Mr. **Duggan**. Sorry?

Mr. **Skeen**. In these days and times a little dramatics doesn't hurt the presentation at all.

Mr. **Duggan**. We like to think we're——

CONGRESSIONAL STAFF SALARIES

Mr. **Skeen**. I've got a stealth question here. You can, I think, easily discern from whence it came. This is in regard to—I do not know what you have done in the area of Congressional salaries or whether you have done any studies. Are they or are they?

Ms. **Tanner**. No. That is a separate group. That would be looking specifically at Congressional salaries, so we have not addressed it, although we have supported substantial pay increases for Members of Congress and executives.

Mr. **Skeen**. No, I am not talking about Members. I am talking about staff. Congressional Staff people.

Ms. **Tanner**. Congressional Staff? No.

Mr. **Skeen**. The reason why, we have had great discussions here of late, in the Ethics Committee, on the discussions of the Congressional Ethics package. We are losing a lot of people off the Hill because they are going into—the Administration down there, for one, can siphon off a lot of folks, and private sector as well. I was really concerned about, just in this area, whether we have—what kind of a pay gap we have between Congressional salaries. And you can understand that this is a good staff question.

Mr. **Duggan**. If our committee continues to exist, which it may not after some of the legislation, we will be glad to take on any assignment with your authorization.

I am happy to say that prior to the Ethics Bill, our Committee was invited to present testimony to the Volcker Commission. And it happens that our recommendations, in advance of knowing what the ultimate results would be, parallel almost to the dollar what the final—and I'm talking about Congressional and Executive pay, not staff.

Mr. **Skeen**. All right. I think we are on the same wave length. So you have a similar problem?

Mr. **Duggan**. Beg your pardon?

Mr. **Skeen**. So the problems are similar then?

Mr. Duggan. Well, no. What I am saying is, our thinking coincided with the Volcker Commission, and I think that puts us in pretty good company is what I am saying, because this was in advance of the legislation.

Mr. Skeen. I see what you are saying. Thank you. Thank you, Mr. Chairman.

Mr. Roybal. Mr. Wolf?

Mr. Wolf. Thank you, Mr. Chairman. I want to welcome you. Maybe just to ask one or two questions, and then make a comment.

Mr. Duggan. Yes, sir.

ADVISORY COMMITTEE TO TESTIFY ON PAY REFORM

Mr. Wolf. I would hope that you would testify before the House Post Office and Civil Service Committee on the Ackerman bill and on the Glenn bill. Do you plan to testify on the Senate side?

Mr. Duggan. We are prepared to accept any invitations that are issued us. Yes.

Ms. Tanner. We are testifying next week, on Wednesday, on the Senate Bill.

Mr. Duggan. The Senate Bill.

Ms. Tanner. Yes.

Mr. Wolf. Have you been asked to testify on the House side?

Ms. Tanner. Not yet.

Mr. Duggan. Not yet, but we are prepared.

Mr. Wolf. I don't know that the hearings have actually been scheduled. I think they may be. Today was the first day, but I do not know if outside witnesses will testify. But if you have not actually been asked, I would urge you to offer to testify. Steny Hoyer will testify today. Do you know who else will testify?

Ms. Tanner. It's this afternoon, yes.

Mr. Wolf. Is it executive officials or is it just Members of Congress?

Ms. Tanner. No.

Mr. Duggan. We plan to attend that session.

Mr. Wolf. I would urge you to ask for the opportunity to testify and to submit your report for the record.

I would also urge you to send a copy to the Members of the Post Office and Civil Service Committee. Can you do that?

Ms. Tanner. Excuse me. We have done that. When we released the report in August, copies were sent.

Mr. Wolf. Of course, nobody was here in August.

Ms. Tanner. That's one of our problems. Low visibility in August.

Mr. Duggan. Right. Timing, you know, clearly works to our disadvantage too, but it is because of the way the——

Mr. Wolf. Could I suggest that we send a copy to each member. Could you give us enough copies for the House Post Office and Civil Service Committee?

Mr. Duggan. Of our report? How are we fixed?

Ms. Tanner. We can give you some.

Mr. Wolf. And then we will send it to the Members, the Republicans and Democrats. Do you have a cover letter, too, that went with that?

Ms. **Tanner**. Yes, we do.

Mr. **Wolf**. Okay, if you could give us a copy of the cover letter, too. Then I would also urge you to ask for the opportunity to testify, if they're taking outside witnesses next week. Do you come into town quite often?

Mr. **Duggan**. I come as needs suggest, yes, sir.

Mr. **Wolf**. Okay.

Mr. **Duggan**. In years past, I have testified before the Ackerman Committee. I have testified before Oakar Committee. I have testified before Chairman Ford. I have testified before Senator Stevens, when he was chairman of the committee that Senator Glenn now heads. I am testifying before Senator Glenn next week on the Senate Bill.

Mr. **Wolf**. Okay.

Mr. **Duggan**. No. That is my assignment, to come as needed.

Mr. **Wolf**. Have you been in touch with OPM?

THE ADVISORY COMMITTEE AND THE ADMINISTRATION'S PAY BILL

Mr. **Duggan**. You mean on the Administration Bill?

Mr. **Wolf**. As they are putting together their bill, are you in touch with them at all?

Ms. **Tanner**. We have not been asked to participate in the discussions.

Mr. **Wolf**. I guess my last comment is, I think it would be helpful if you got copies of that report and sent them to editorial writers and newspapers and the media. I think it would be very, very helpful.

Mr. **Duggan**. We did, as a matter of fact, sir. But then, again, this was last August.

Mr. **Wolf**. On the locality question, you said people would take a reduction. Would that be necessary? Could you not grandfather current pay levels and deal with it that way? That way you would eliminate any opposition, I would think.

Mr. **Duggan**. Good suggestion.

Ms. **Tanner**. I believe the two bills that have been introduced do in fact provide for no reduction in pay, and that everyone would at least receive the Employment Cost Index adjustment, the ECI produced by the Bureau of Labor Statistics on a quarterly basis, so that no one would actually lose money.

LOCALITY PAY AREAS FOR CONSIDERATION

Mr. **Duggan**. The reason I put the stress on that is because of the turnabout. I think there is a general understanding of what we had in mind. We weren't—when we mentioned locality pay, we were not talking about slashing people's salary, we were talking about having some peg, particularly, for public approval.

I think that this would forestall any outrage that happened in the communities and was falsely generated by agitators, you might say, over the original Congressional pay proposal.

Mr. **Wolf**. Which localities would be at the high level? Washington, LA, San Francisco, New York?

Mr. **Duggan**. New York, Boston.

Ms. **Tanner**. The Administration, in its budget message to Congress, highlighted three areas that would be granted an eight percent pay increase under their proposal.

San Francisco, New York, and Los Angeles. Washington, DC and Boston were not included in their initial proposal. Of course, I do not know what their final bill will look like, but the two bills that have already been submitted would look at all cities and adjust the pay rates based on the differences.

Mr. **Wolf**. Would it be your feeling that Washington ought to be included, based on the information that you have looked at? It seems to me, clearly, it should.

Mr. **Duggan**. I think you can make a good case for that.

Mr. **Wolf**. Yes. I thank you, Mr. Chairman.

Mr. **Roybal**. Thank you, Mr. Wolf.

We would like to thank you and your colleague for your presentation. We will take your request under consideration.

Mr. **Duggan**. Thank you, Mr. Chairman. If I do not have the opportunity to meet with you again, I would like to express my appreciation for past courtesies, and to all of you.

Mr. **Roybal**. I hope to see you again.

[Questions for the record follow:]

Response to Questions Submitted by Representative Daniel K. Akaka

In its 1989 report, "The Bottom Line on Federal Pay—The Gap Becomes a Canyon," the Committee found that federal agencies are experiencing difficulty in recruiting and retaining a quality work force. It presents evidence that the current pay system is not responsive to local labor market conditions and urges an overhaul of the pay system. The Committee recommended an FY 1991 pay increase of 10 percent for civilian and military personnel.

Representative Gary Ackerman has introduced H.R. 3979, the Federal Pay Reform Act of 1990. (Senator Glenn has introduced a similar bill.) The bill would establish a locality based pay system where non-federal pay exceeds pay rates for similar federal jobs.

Question. Has the Advisory Committee taken a position on this legislation?

Answer. The Advisory Committee on Federal Pay was invited to testify before the Senate Governmental Affairs Committee on March 21. Permit me to quote from the first paragraph of my opening statement, "Speaking for the other two members of the Advisory Committee and myself, we strongly support locality pay reform in 1990 and are hopeful that legislation will be enacted during this session of Congress." Further, the Advisory Committee states, "In concluding my remarks, let me say that, when we were preparing this statement, the Administration's bill was not available to us, so we have no knowledge of what this bill contains, other than some form of locality pay. However, we have reviewed the House Bill (HR 3979) and believe that, aside from a few minor differences, the bills are compatible."

Question. Has OPM consulted with the Advisory Committee in the formulation of its pay reform proposal?

Answer. We have not been invited to participate in the deliberations.

Question. While the President's budget proposes a modest pay increase for federal employees and limited locality pay (8 percent for LA, San Francisco, New York City), it also targets $5.5 billion in cuts from federal pay and benefits.

Question. In your assessment, what impact would these cutbacks have upon the pay gap between federal and non-federal employees?

Answer. The Advisory Committee believes that the proposed increases of 8 percent for the three cities, Los Angeles, San Francisco, and New York is a first step in correcting the recruitment and retention problems created by the pay differentials. We would hope that a more comprehensive form of locality pay system could be phased in over the next few years. In response to the second question on the $5.5 billion in cuts from Federal pay and benefits, we would hope that the Federal health benefit program can be reformed and result in some savings when the Federal Government is able to negotiate reduced rates with carriers. it is also hoped that Federal retirees will be treated the same as Social Security recipients.

Question. How much are cuts in prior fiscal years since 1981 responsible for the serious problems in recruitment and retention experienced today?

Answer. The pay gap in 1981 was 15.1 percent and today's is double that. The erosion in benefits has also been gradual during this period, particularly health care premium costs, which have escalated and reduced the pay increases that have been granted.

[The justifications follow:]

ADVISORY COMMITTEE ON FEDERAL PAY

ANNUAL ESTIMATE OF APPROPRIATION

FISCAL YEAR 1991

ADVISORY COMMITTEE ON FEDERAL PAY

SALARIES AND EXPENSES

For necessary expenses of the Advisory Committee on Federal Pay, established by 5 U.S.C. 5306, $207,000.

General Statement

The appropriations will pay the expenses of the three members of the Committee for time they spend on Committee business, the salaries of the Committee's three full-time employees, rent and other expenses of maintaining an office. This budget also covers the cost of special studies and other services required to evaluate proposals affecting annual changes in the pay of 1.4 million Federal white-collar employees. The direct compensation bill for white-collar employees totals about $53 billion a year, as derived from the Pay Agent's 1989 report.

ADVISORY COMMITTEE ON FEDERAL PAY

JUSTIFICATION OF APPROPRIATION REQUEST, 1991

The Advisory Committee on Federal Pay was appointed by the President in January 1972 as an independent agency established under the Federal Pay Comparability Act of 1970 (Public Law 91-656). The Advisory Committee consists of three private citizen members who are not Federal Government employees. The Advisory Committee is responsible for preparing an independent annual report to the President with recommendations for annual pay adjustments affecting the approximately 1.4 million Federal white-collar employees covered by the General Schedule and those linked to the General Schedule who are employed by the Veterans Health Services and Research Administration (formerly the Department of Medicine and Surgery), part of the U.S. Department of Veterans Affairs, and the Foreign Service. Annual direct compensation costs for these Federal white-collar employees now amount to about $53 billion. When the military and other pay systems linked to the General Schedule are considered, the cost is about $123 billion.

In preparing its report, the Committee must consider the recommendtions of the President's Pay Agent (the Directors of the Office of Management and Budget and the Office of Personnel Management and the Secretary of Labor) and the views of organizations representing Federal employees.

The Advisory Committee was granted two additional responsibilities as a result of recommendations by the President's Panel on Federal compensation in December 1975 and an Executive Order signed on July 20, 1977. The first is a labor relations-mediation role--intended to improve the day-to-day and long-term relations between the President's Agent and the Federal Employees Pay Council, composed of unions representing Federal workers. The second responsibility involves making recommendations to the President for improving Federal compensation policies and practices, as recommended by the 1975 report.

Members of the Advisory Committee are paid a daily rate and receive per diem and travel expenses for the time spent on Committee business. The funds are also requested to pay for the staff and other administrative expenses involved in the Committee's activities, as well as for maintaining a small headquarters office.

ADVISORY COMMITTEE ON FEDERAL PAY

SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 95-1800-0-1-805	1989 actual	1990 est.	1991 est.
Program by activities			
10.00 Total obligations	194	205	207
Financing:			
25.00 Unobligated balance lapsing	11		
40.00 **Budget authority (appropriation)**	**205**	**205**	**207**
Relation of obligations to outlays			
71.00 Obligations incurred, net	194	205	207
72.40 Obligated balance, start of year	8	14	15
74.40 Obligated balance, end of year	−14	−15	−15
90.00 Outlays	188	204	207

Object Classification (in thousands of dollars)

Identification code 95-1800-0-1-805	1989 actual	1990 est.	1991 est.
Personnel compensation			
11.1 Full-time permanent	110	113	115
11.3 Other than full-time permanent	5	6	6
11.9 Total personnel compensation	115	119	121
12.1 Civilian personnel benefits	11	13	13
21.0 Travel and transportation of persons	4	5	5
23.1 Rental payments to GSA	33	33	33
23.3 Communications, utilities, and miscellaneous charges	4	4	4
24.0 Printing and reproduction	6	7	7
25.0 Other services	19	21	21
26.0 Supplies and materials	2	3	3
99.9 Total obligations	194	205	207

Personnel Summary

Total number of full-time permanent positions	2	3	3
Total compensable workyears: Full-time equivalent employment	2	3	3

WEDNESDAY, MARCH 14, 1990.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

WITNESSES

MARSHALL J. BREGER, CHAIRMAN,
WILLIAM J. OLMSTEAD, EXECUTIVE DIRECTOR
GARY J. EDLES, GENERAL COUNSEL
JEFFREY S. LUBBERS, RESEARCH DIRECTOR

Mr. ROYBAL. The Committee will now hear from the Administrative Conference of the United States.

Mr. BREGER. Thank you very much, Mr. Chairman. We have an extensive submission including written testimony with an appendix. I would ask that that be placed in the record.

Mr. ROYBAL. Without objection, that will be the order.

[The information follows:]

STATEMENT OF MARSHALL J. BREGER

Introduction

My name is Marshall J. Breger and I serve as Chairman of the Administrative Conference of the United States. I am pleased to discuss with you the mission of the Administrative Conference and the President's budget request of $2,079,000 to undertake that mission in fiscal year 1991.

Background

It is helpful, Mr. Chairman, to evaluate the role of the Conference in some context. The idea of having an institution to recommend improvements in agency procedures goes back forty years and has received support from all three branches of government on a bipartisan basis. Before there was a permanent Administrative Conference, the courts and two Presidents appointed temporary organizations to do the same job. The Judicial Conference of the United States in 1949 designated a committee of its judges to examine some of the more pressing shortcomings of the administrative process -- shortcomings that were creating difficulties when they showed up in court on judicial review of agency action. And a special advisory committee set up by the Chief Justice shortly thereafter recommended establishment of an Administrative Conference. A Republican President, Dwight Eisenhower, established a temporary Conference on an experimental basis in 1953. The success of the experiment led his Democratic successor, President John Kennedy, to establish a second temporary Conference in 1961. The widespread endorsement of the Conference idea, including the recommendations of both temporary conferences that a permanent institution be established, led Congress to create the Administrative Conference in 1964 as a permanent, independent agency.

As you know, the Conference was modeled on the Judicial Conference of the United States, whose members include representatives of the Supreme Court, the federal circuit and district courts, and other judicial officers, who meet, from time to time, in a fashion akin to that of the Conference. The research arm of the Judicial Conference is maintained in the Federal Judicial Center, an organization charged with the responsibility for furthering the development of improved judicial administration. Principally, the Federal Judicial Center studies the operation of the federal courts, formulates recommendations for the Judicial Conference on ways to improve the administration of the courts, and conducts programs of continuing education and training for court personnel.[1] Apart from a special statutory responsibility for improvement of automatic data processing and systems procedures used by the courts, the Federal Judicial Center performs essentially those functions for the judicial branch of government that the Office of the Chairman of the Administrative Conference is charged with performing for the departments and administrative agencies.

On swearing in the first Conference Chairman, Professor (now Federal Circuit Judge) Jerre Williams in 1968, then-President Lyndon Johnson noted:

> In 1952 Justice Jackson observed that "The rise of administrative bodies probably has been the most significant legal trend of the last century. Perhaps more values today are affected by their decisions than by those of all the courts."
>
> The success of two temporary conferences -- both chaired very ably by Judge Prettyman -- convinced us that we needed a permanent agency for continuing review of the administrative process.
>
> We needed a forum for the constant exchange of ideas between the agencies and the legal profession and the public.
>
> We want the Administrative Conference to be the vehicle through which we can look at the administrative process and see how it is working and how it could be improved and how it could best serve the public interest.[2]

---

[1] 28 USCA § 620 (1968).

[2] Remarks at the Swearing In of Jerre S. Williams as Chairman, Administrative Conference of the United States, Jan. 25, 1968, [1968-69] Pub. Papers, vol. 1 at 68.

What is true for the United States has been true for almost the entire western industrialized world, where the political leadership has recognized the need for objective and relatively autonomous practical advice on how to navigate the "administrative state." Most countries with significant administrative bureaucracies have some permanent body which monitors administrative procedure and recommends improvements. Great Britain has the Council of Tribunals, charged with the responsibility for overseeing a wide variety of administrative tribunals and consulting with them on the establishment of procedural rules. In Australia, the Administrative Review Council focuses on questions concerning review of administrative action by courts and other panels, making recommendations on the adequacy of procedures and the categories of administrative decisions that should be reviewed. The Canadian Law Reform Commission considers the procedures of administrative tribunals, including government departments and agencies, and the Report and Studies Commission of the French Conseil d'Etat prepares confidential annual reports identifying pressing problems of administrative procedure and recommending legislative changes.

Statutory Mission

The Administrative Conference of the United States is a permanent agency consisting of 101 members who are the government's top legal officers, leading academic authorities in the field of administrative law, and experts from private life who are knowledgeable about governmental processes. The agency advises the President, the Congress and federal agencies on ways to improve the fairness and efficiency of federal agencies' administrative procedures. These procedures include those used to conduct adjudications, rulemakings and other agency activities. The Conference directs studies of the structure of government agencies and their administrative processes. In addition, the Conference advises the Judicial Conference of the United States on matters of administrative law relating to judicial review of agency decisions.

An important part of our work, although not much publicized, is our informal contact with agencies to improve their administrative procedures. The Conference answers requests for advice or information, devises model rules such as those for agency implementation of the Government in the Sunshine Act and the Equal Access to Justice Act, and helps agencies with a wide range of procedural problems. It collects and synthesizes materials like the *Federal Administrative Procedure Sourcebook*, *A Guide to Federal Agency Rulemaking* (currently being revised and updated), the *Sourcebook on Federal Agency Use of Alternative Dispute Resolution* (1987), the *Sourcebook on Negotiated Rulemaking* (1990), and other administrative law reference materials. It regularly conducts seminars and working groups on key topics of current concern in administrative law and governmental process. This saves agencies from expending resources independently to accomplish similar tasks and provides a mechanism for ensuring consistency from agency to agency in procedural matters affecting the public.

Conference Initiatives Affect Millions of Americans

In its first 20 years Conference recommendations had a significant effect on the workings of the federal government.[3] Early Conference studies, for example, documented the government's success in interposing various "technical defenses" in suits seeking relief against federal agency action. The Conference recommended that these rules be changed[4] and Congress passed a Conference-sponsored bill to do so in 1976.[5] In 1972, the Conference adopted one of its more influential recommendations, urging Congress to allow agencies to impose civil penalties administratively as a complement to seeking criminal sanctions or license revocation.[6] The Conference developed a model statute incorporating an on-the-record hearing before an administrative law judge, review by the agency head, with judicial review in the courts of appeals to contest the imposition of any penalty. This approach has been incorporated into dozens of statutes, including, in 1986, the Immigration Reform and Control Act,[7] and, most recently, the Department of Housing and Urban Development Reform Act of 1989.[8] It has been upheld by the Supreme Court.[9]

---

[3] For a general description of the Conference's early work, see Wozencraft, *The Administrative Conference of the United States*, 24 Bus. Law. 915 (1969); *Symposium: The Administrative Conference of the United States*, 26 Admin. L. Rev. 259 (1974); McGowan, *The Administrative Conference: Guardian of the Regulatory Process*, 53 Geo. Wash. L. Rev. 67 (1985).

[4] Recommendations 68-7, Elimination of Jurisdictional Amount Requirement in Judicial Review, 1 CFR § 305.68-7 (1989); 69-1, Statutory Reform of the Sovereign Immunity Doctrine, 1 CFR § 305.69-1 (1989); and 70-1, Parties Defendant, 1 CFR § 305.70-1 (1989).

[5] Pub. L. 94-574, 90 Stat. 2721 (1976).

Conference initiatives now touch the lives of millions of Americans. In 1989, we examined the procedural mechanisms through which the Medicare program protects its beneficiaries from unnecessary, poor quality or inappropriate medical care.[10] In addition, we have begun to examine other aspects of the Social Security disability adjudication process. We looked as well at the use of medical personnel to help process the more than 1.5 million requests for disability insurance benefits and supplemental security income submitted annually to the Social Security Administration.[11] In furtherance of a 1987 Conference recommendation, we helped congressional staff draft the procedural portions of bills to protect private sector health and safety whistleblowers, both generally and in the aviation industry specifically, and testified on whistleblower legislation before the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor.

At the same time, we made significant recommendations bearing on fundamental aspects of the governmental process. Following the Presidential election of 1988, we persuaded the new Administration to adopt a first-of-its-kind Code of Conduct for transition workers.[12] At the request of the Domestic Policy Council and the Office of Personnel Management (OPM), and with this committee's encouragement, the Conference recently completed a review of the complex and redundant systems for the federal employee grievance and personnel appeals process. Our Committee on Regulation is examining the "right-to-know" statutes and rules used by the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and The Food and Drug Administration (FDA) as part of its review of risk communication as a regulatory approach.

---

[6] Recommendation 72-6, Civil Money Penalties as a Sanction, 1 CFR § 305.72-6 (1989).

[7] Pub. L. 99-603, 100 Stat. 3366-67 (1986).

[8] Pub. L. 101-235, §§ 107-111, 134, 103 Stat. 2000 et seq. (1989).

[9] Atlas Roofing Co. v. OSHRC, 430 U.S. 442 (1977) (administrative imposition of civil penalties does not violate Seventh Amendment). See also Tull v. United States, 481 U.S. 412 (1987) (reaffirming Atlas Roofing).

[10] Recommendation 89-1, Peer Review and Sanctions in the Medicare Program, 1 CFR § 305.89-1 (1989); Jost, *Administrative Law Issues Involving the Medicare Utilization and Quality Control Peer Review Organization (PRO) Program: Analysis and Recommendations*, 50 Ohio State L. J. 1 (1989).

[11] Recommendation 89-10, Improved Use of Medical Personnel in Social Security Disability Determinations, 1 CFR § 305.89-10 (1989); Bloch, *The Use of Medical Personnel in Social Security Disability Determinations* (1989).

In the year since I last reported to you, we were actively involved in ensuring the integrity of governmental decisional processes by proposing changes in the conflict-of-interest requirements for members of federal advisory committees.[13] We proposed that agencies make their adjudicatory decisions more readily available to the public.[14] We advised the staffs of the congressional banking committees about procedural problems in connection with the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).[15] Using the financial assistance provided by the General Services Administration (GSA), the Conference also developed and published a Sourcebook of ethics materials and an associated ethics guide which were distributed to key transition workers. And we have worked diligently to develop legislation to supplement the costly and litigious rulemaking and adjudicatory processes, where appropriate, with faster, less costly consensual mechanisms.

During the past year the Conference continued its initiatives for encouraging the use of alternative dispute resolution (ADR) as a means for reducing litigation costs throughout government. A rule establishing a roster of "neutrals" has been adopted by the Conference

---

[12] Recommendation 88-1, Presidential Transition Workers' Code of Ethical Conduct, 1 CFR § 305.88-1 (1989); Harter, *Proposed Standards of Conduct for Presidential Transition Workers*, 36 Fed. Bar News & J. 130 (1989).

[13] Recommendation 89-3, Conflict-of-Interest Requirements for Federal Advisory Committees, 1 CFR § 305.89-3 (1989); Berg, *Conflict-of-Interest Requirements for Members of Federal Advisory Committees* (1988).

[14] Recommendation 89-8, Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions, 1 CFR § 305.89-8; Gilhooley, *The Availability of Decisions and Precedents in Agency Adjudications: The Impact of the Freedom of Information Act Publication Requirements*, 3 Admin. L. J. 53 (1989).

[15] Pub. L. 101-73, 103 Stat. 183 (1989).

Qualified applicants are placed in a database for agency use. Recommendations were adopted concerning the use of ADR for resolving contract disputes, and eight agencies supported the Conference with funds so that a series of roundtable discussions among agencies with similar dispute resolution problems could be held with expert consultants and agency personnel knowledgeable in the area. The Conference has actively sought to support Congressional initiatives that would implement its Recommendations concerning negotiated rulemaking. There are bills currently pending in both the House and the Senate that would encourage the use of both ADR generally and, more specifically, negotiated rulemaking by agencies and would clarify how the provisions of the Federal Advisory Committee Act should be applied. In addition, the Conference is publishing a major sourcebook reference for agencies with the financial assistance of a number of federal agencies.

Immigration Procedure Initiatives

In addition to the activities just described, the Conference has continued to examine a number of procedural problems associated with implementation of the nation's immigration laws. As this committee is well aware, these initiatives were undertaken at your specific request and with the encouragement of members of the Congressional Hispanic Caucus. In June of last year we examined the procedures by which the Immigration and Naturalization Service administered the alien legalization program authorized under the Immigration Reform and Control Act of 1986. Based on our review, we issued a Statement on Mass Decisionmaking Programs: The Alien Legalization Experience outlining the lessons learned from the legalization program.[16] The Statement was based on a comprehensive review of the program prepared in late 1988 by Conference consultant David S. North of TransCentury Development Associates, an authority on immigration issues. It was a follow-up to his first report for the Conference, submitted in the spring of 1988, evaluating whether the legalization program should be extended beyond its May 4, 1988 deadline. It concluded that it should. Although only the House of Representatives adopted this recommendation, Mr. North's study, as you will recall, was widely discussed during the course of the debate on the extension issue. We are proud of our work in this area.

---

[16] Statement 13, 54 Fed. Reg. 28,964, 28,975 (1989).

In January, 1989, Professor James Nafziger of the Willamette University College of Law submitted a report on the reviewability of visa denials by consular officers. As the committee knows, almost all aliens who wish to enter the country must first secure visas, which are issued by consular officers at the various U.S. consulates abroad. Review of those decisions by the Visa Office of the Department of State in Washington is largely advisory, however, and the courts have generally declined to review consular officers' decisions. Professor Nafziger's study examined the need for administrative reform of the visa denial process and recommended, among other things, that consular officer denials be accompanied by a more explicit statement of reasons, that the Visa Office play a more active role in the review process, and that Congress and the State Department expand the scope of review. A Conference recommendation on the subject was adopted last December.[17]

Finally, the Conference examined the procedures employed for handling asylum claims -- including hearing procedures, administrative appeals, and the need for judicial review. For the substance of asylum policy as mandated by Congress to work, it is absolutely essential that the procedures employed be as efficient as possible while ensuring the rights of potential asylees. In 1988, the United States received 60,000 asylum applications and the Immigration and Naturalization Service was projecting upwards of 100,000 applications in the near future. Recognizing that there may be a need to adapt existing procedures to cope with this developing workload, the Conference engaged Professor David Martin of the University of Virginia School of Law as a consultant. Relying on his report, in Recommendation 89-4, the Conference proposed a number of significant reforms to the system.[18]

---

[17] Recommendation 89-9, 54 Fed. Reg. 53496 (1989)

[18] 54 Fed. Reg. 28970 (1989)

The Conference recommended that the Attorney General create a new Asylum Board within the Executive Office of Immigration Review consisting of an adjudication center, an appellate division, and a documentation center. All claims would be heard exclusively by the adjudication division. Applicants would be encouraged to secure counsel or a qualified nonattorney representative. Asylum adjudicators would develop substantial expertise regarding conditions in the foreign country. The appellate division would consider appeals filed by those denied asylum, with a high priority placed on expeditious completion of appeals. Judicial review of asylum denials would be available. The Conference's recommendation is now receiving serious consideration from the Department of Justice.

If I may be blunt, Mr. Chairman, when compared with other governmental programs, we have done all this -- and much more -- on a shoestring.

Conference Membership

The Conference has an authorized membership of 101 members, who include the government's top legal officers, leading academic authorities in the field of administrative law, and experts from private life, including practicing lawyers, who are knowledgeable about governmental processes. The Administrative Conference of the United States is headed by a Chairman who is an advice-and-consent Level II appointee with a term of five years. Like most of my predecessors, my background was principally in the academic community. Immediately before coming to this post in October 1985, however, I served as a Special Assistant to the President in the Office of Public Liaison. Except for the Chairman, all Conference members serve without compensation.

The Chairman acts as the chief executive officer of the Conference, presiding over its meetings. He also heads the Office of the Chairman which consists of a career staff of 24 full time equivalents (FTE) which includes 21 full-time permanent, two part-time permanent, one full-time temporary, and two part-time student employees.

The Administrative Conference's overall direction is reviewed by a ten-member Presidentially appointed Council, half of whose members have traditionally been from the Executive branch, and the other half from outside the government. Current members of the Council are Phillip D. Brady, General Counsel of the Department of Transportation; Richard C. Breeden, Chairman of the Securities and Exchange Commission; Harold R. DeMoss, Jr., Bracewell & Patterson, Houston, Texas; Professor Emeritus Walter Gellhorn of Columbia University School of Law; Trudi M. Morrison, President of The Morrimount Corporation in Detroit, Michigan; Constance B. Newman, Director of the Office of Personnel Management; Robert S. Ross, Executive Assistant to the Attorney General; R. Carter Sanders, Jr., Sanders & Associates; and Edward L. Weidenfeld, Esquire, Washington, D.C. We have one council vacancy at present.

The membership of the Administrative Conference is divided into two categories government, and non-government or "public.". There are fifty government members who are, typically, the general counsels or commissioners of their agencies, or other senior level departments and agency officials. Members do not have to be lawyers, however, and some are not. Among our current government members are Vice Chairman Ronald Cass of the International Trade Commission, soon to become Dean at the Boston University Law School, Jaime Ramon, General Counsel of the Office of Personnel Management, Eileen Bradley, Associate Commissioner, Social Security Administration, and former federal judge Abraham Sofaer, who is now Legal Adviser at the Department of State.

The Conference also has among its government members a cadre of career civil servants who lend important continuity to its activities. Among the career government officials are three who hold so-called "floating" government seats that are used to provide the Conference with perspectives that might otherwise go unrepresented. Those seats, which rotate from time to time among agencies and departments, are filled by an administrative law judge, a member of a board of contract appeals, and an inspector general.

Among our public members are Lloyd Cutler and Fred Fielding, former White House Counsels to Presidents Carter and Reagan, respectively; Stuart Eizenstat, former Director of the Domestic Policy Council under President Carter; James C. Miller III, former Chairman of the FTC and Director of OMB under President Reagan; Sally Katzen, a partner in the Washington law firm of Wilmer, Cutler & Pickering, and past Chair of the Section of Administrative Law and Regulatory Practice of the American Bar Association; Carolyn Kuhl, former Deputy Solicitor General, Department of Justice, now in private law practice in Los Angeles; former Transportation Secretary James H. Burnley IV; Jonathan Rose, Associate Dean, Arizona State University Law School; Elliot Bredhoff of the firm of Bredhoff and Kaiser, Counsel to the AFL-CIO Industrial Union Department and one of the country's most distinguished labor lawyers; Jonathan Weiss, Director of Legal Services for the Elderly in New York City; Phillip Truluck of the Heritage Foundation; Ernest Gellhorn, Regional Managing Partner, Jones, Day, Reavis & Pogue, in California, and formerly the Dean at Case-Western Reserve Law School, the University of Washington Law School, and the Arizona State University Law School; Dr. David Pittle, Technical Director of Consumers Union; Curtis Barnette, Senior Vice President and General Counsel, Bethlehem Steel Corporation; Paul Verkuil, President of the College of William and Mary in Williamsburg, Virginia, currently Chairman of the American Bar Association's Section on Administrative Law and Regulatory Practice, and one of this country's foremost experts in administrative law; and David Vladeck of the Public Citizen Litigation Group.

Because of the prestige of serving on the Administrative Conference, the government receives, free of charge (except for travel expenses for out-of-town members) the services of both its government and public participants -- individuals with an impressive array of accomplishments and experiences who donate hundreds of hours of service each year. Our members share two things in common -- an expertise in problems of administrative procedure and a willingness to contribute that expertise to make the governmental process more open, fair and efficient. A list of Conference members is attached as Appendix C.

Conference bylaws also establish a category of nonvoting, emeritus membership for former Chairmen and those individuals who have served at least 8 years as Conference members. By this means, the Conference retains the expertise of these distinguished administrative law authorities while permitting new members to bring their ideas into the fold. Among our outstanding Senior Conference Fellows are Alan Morrison, Director, Public Citizen Litigation Group, Professors Kenneth Culp Davis and Clark Byse, two of the academic "giants" of administrative law scholarship, and Justice Antonin Scalia.

The Conference also maintains a liaison relationship with the federal judiciary, which is represented by Circuit Judge Stephen G. Breyer of the United States Court of Appeals for the First Circuit. Former Judge Kenneth Starr resigned as the judiciary's second liaison member when he became Solicitor General of the United States and we are awaiting word from the Judicial Conference as to his successor. We also have liaison arrangements with federal agencies that are not regular Conference members and groups interested in the administrative process, such as the Federal Bar Association, and the Section of Administrative Law and Regulatory Practice and the National Conference of Administrative Law Judges, Judicial Administration Division of the American Bar Association. Both the American Bar Association and the Federal Bar Association have passed resolutions strongly endorsing adequate funding for the Conference. See Appendix D.

I cannot emphasize enough, Mr. Chairman, how much the efforts of these volunteers assist our work. It is not merely the hundreds of hours of volunteer time and effort we are given. Put simply, it is the opportunity for the Conference generally, and our consultants specifically, to learn from some of the most seasoned practitioners of public law and test Conference recommendations in the crucible of their accumulated experience.

The Conference Process

The Conference's formal advice is given in the form of recommendations that are debated and adopted by vote of its 101 members. It develops its recommendations through a unique deliberative process that melds theoretical and practical considerations. The Chairman, in consultation with the professional staff, initially decides to pursue a particular topic on the basis of suggestions from Conference members, agency officials, members of the academic community, members of Congress or Congressional committees, or others. The topics are typically narrow and precise -- as can be seen from the list of recommendations set out in the Code of Federal Regulations, and attached as Appendix E.

When a topic is defined, the project proposal is submitted to the Council for approval and a consultant is selected -- usually a law professor who is already a noted national expert in that particular field. The consultant reviews available literature and case law, interviews agency officials, and submits a comprehensive report on the topic. Our Research Director and one or more of our staff attorneys work with the consultant to ensure that all pertinent issues are addressed and that the ultimate product is of high quality.

The scope of the report is worked out in advance, and monitored throughout the project. But the consultant retains the latitude to make his or her own findings and conclusions. As a result, consultants at times cover issues or develop ideas which will not be translated into recommendations by the Conference's committees or adopted by the Conference itself. Although the Conference staff tries to ensure that the report is a practical document, not merely an "ivory tower" effort, we do not censor our consultants' work. Indeed, we attract national experts precisely by according them freedom to reach their own conclusions and considerable latitude in the product they produce -- with the understanding that the committees and the Conference are not bound by a consultant's report.

After a consultant's draft report is submitted, it is reviewed by the members of one of our committees. (All Conference members serve on one or more of the committees.) If, on occasion, the committee review process reveals inadequacies in the report as originally tendered, the consultant is asked to undertake further work. If the committee believes, for example, that the report lacks a sufficiently practical focus, the consultant, working cooperatively with committee members or the staff, may agree to modify his or her draft report. Once the report is complete and satisfactory, the committee develops a set of recommendations through the tug and tussle of debate and compromise. Committee deliberations -- in which representatives of affected parties are involved even if they are not members of the Conference -- are perhaps the most unique and special aspect of Conference activity. They produce practical solutions to difficult, and often seemingly intractable, problems.

Recommendations that emerge from committee review are transmitted to the Council. If the Council is satisfied that the recommendations and underlying report are satisfactory, it places the recommendations on the agenda of the next semi-annual general meeting, or Plenary Session. At a Plenary Session, the proposed recommendations are, once again, thoroughly debated. Often, recommendations are amended. On occasion, they are referred back to committee for further work, or simply voted down. This extensive process of deliberation and review -- by the Conference's professional staff, the committee, the Council, and the full membership assembled in Plenary Session -- makes certain that recommendations which emerge reflect the maximum possible consensus among knowledgeable persons of many perspectives. Recommendations resulting from this unique process are much more likely to achieve implementation than single-source proposals.

Recommendations which survive the Plenary process are published in the Federal Register and transmitted by the Chairman to the Congress, the President, the judiciary or the relevant agencies. By arrangement with the Office of the Federal Register, they are codified in the Code of Federal Regulations at 1 C.F.R. Part 305.

Implementation of Conference Recommendations

Implementing Conference recommendations is an important part of the activities of the staff of the Office of the Chairman. The Office maintains a separate file on each past recommendation, which includes information received from all agencies concerned with that recommendation. Because the Conference has advisory powers only, the staff has to monitor Congressional and agency activities to discover if one or more agencies, or a Congressional committee, is interested in a problem that relates to a past recommendation. The staff, or the Chairman personally, will then ensure that the interested body is aware of the Conference Recommendation. Conference assistance will be offered. This includes the preparation of testimony, the submission of written comments on agency rule proposals, or the development of training for applicable audiences interested in implementation. A copy of our implementation digest is included as Appendix F.

Assistance to Congress

We are particularly proud, Mr. Chairman, of our efforts to make Congress aware of our recommendations. The Conference has always been responsive to congressional requests and we have, from time to time, made our views known on individual matters pending before Congress. In 1987, however, I asked our new General Counsel to institute a structured and systematic program to review bills introduced into Congress to determine whether they dealt with areas on which the Conference had adopted a recommendation. If they do, we advise Congress of our views, typically by letters to the majority and minority staffs of appropriate committees.

Since this program of systematic legislative assistance began two years ago, the Conference has been asked by 10 committees or subcommittees to present testimony on 19 separate occasions, apart from appropriations or reauthorization testimony. In fiscal year 1989, and fiscal year 1990 to date, we have provided testimony as follows:

1. Subcommittee on Administrative Law and Governmental Relations, House Committee on the Judiciary:

a. May 3, 1989, on H.R. 743, the "Negotiated Rule Making Act of 1989."

b. January 31, 1990, on H.R. 2497, the "Administrative Dispute Resolution Act."

2. Subcommittee on Labor-Management Relations, House Committee on Education and Labor, November 16, 1989, on H.R. 3368, "The Employee Health and Safety Whistleblower Protection Act."

3. Subcommittee on Human Resources, House Committee on Post Office and Civil Service, June 13, 1989, on the effects of government ethics restrictions on the recruitment and retention of federal employees.

4. Subcommittee on Aviation, House Committee on Public Works and Transportation, November 15, 1989, on a bill to extend the Federal Aviation Administration's demonstration civil penalty project.

5. Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, September 14, 1989, on S. 971, "The Administrative Dispute Resolution Act."

6. Subcommittee on Courts and the Administrative Practice, Senate Committee on the Judiciary, February 22, 1990, on S. 1436, the Land Management Review Act. Judicial review provisions of the bill are modeled on a 1975 Conference recommendation regarding the proper forum for judicial review of agency action.

In the last year alone, Congress incorporated Conference recommendations or recognized the Conference's work in four separate statutes, as follows:

Public L. 101-236 extended for 4 months the Federal Aviation Administration's two-year civil penalty demonstration program. The extension was granted expressly to permit the Conference to complete a study of the civil penalty program and report to Congress.

Public L. 101-235, the Department of Housing and Urban Development Reform Act of 1989, included provisions authorizing the administrative imposition of civil penalties against certain mortgagees and lenders, multi-family mortgagors, violators of the Interstate Land Sales Full Disclosure Act, and issuers and custodians of mortgages guaranteed by the Government National Mortgage Association. These provisions authorize the imposition of civil money penalties and judicial review in accordance with procedures proposed by the Conference in Recommendations 72-6 and 79-3.

> **Public L. 101-194, the Ethics Reform Act of 1989, incorporated Conference Recommendation 88-4 concerning deferred taxation for divestitures required to avoid conflicts of interest by federal officials.**
>
> **Public L. 101-73, the Financial Institutions Reform Recovery and Enforcement Act of 1989, legislation to restructure the oversight of the thrift industry, included a requirement that bank regulatory agencies establish their own pool of administrative law judges and develop a set of uniform rules of procedure for administrative hearings before those agencies. It also required the Federal Deposit Insurance Corporation to encourage the use of alternative means of dispute resolution. The new law implements provisions of Recommendations 87-12 and 88-8.**

Conference proposals were likewise incorporated into several bills that received congressional attention in the 101st Congress, although they did not -- or at least have not as yet -- become law.

> H.R. 743 and S. 303, the Negotiated Rulemaking Act of 1989, reflect Conference initiatives to provide a legislative underpinning for the conduct of negotiated rulemaking by federal agencies. S. 303 unanimously passed the Senate in 1989. H.R. 743 has been cleared by the Subcommittee on Administrative Law and Governmental Relations for full Judiciary Committee action.
>
> H.R. 2497 and S. 971, the Administrative Dispute Resolution Act, to provide a statutory footing for agency use of alternative means of resolving disputes, incorporate Conference initiatives.
>
> H.R. 7, a bill to amend the Carl D. Perkins Vocational Education Act, which passed the House in 1989, directed the Secretary of Education to use negotiated rulemaking techniques in accordance with Conference guidelines when proposing regulations under the legislation. The bill expressly requires the Secretary to act in accordance with Conference recommendations on the subject.
>
> H.R. 3368 and S. 436, the Employee Health and Safety Whistleblower Protection Act, bipartisan bills to protect whistleblowers in the private sector, adopt procedural provisions modeled on Recommendation 87-2, providing for a consolidation of all whistleblower enforcement activity in the Department of Labor with judicial review in the courts of appeals. In the Senate, both Senators Metzenbaum and Grassley commented favorably on the Conference's detailed study of the issue when introducing the bill.
>
> S. 1436, the Land Management Review Act, introduced by Senator Packwood, designed to provide a long-term solution to the problem of delay in the courts over implementation of forest plans, provides for judicial review of agency decisions in accordance with Conference Recommendation 75-3 dealing with the choice of venue for review of agency action.

And the rest of fiscal year 1990, and 1991, promise many opportunities for the Conference's addition of its administrative expertise to various legislative initiatives.

Improvements in the Judicial Process

In 1989 the Conference began a unique, coordinated program to assist the Court of Appeals for the District of Columbia Circuit and the Federal District Court in their efforts to establish a broad variety of mediation and other consensual methods to resolve selected administrative appeals and other cases. As part of the program, the Conference is sponsoring a series of training sessions for mediators participating in the District Court initiative. With the aid of a grant from the Eugene and Agnes Meyer Foundation, the Conference conducted a roundtable for agency General Counsels to familiarize them with the program. D.C. Circuit Chief Judge Patricia Wald, District Judge Royce Lamberth, and Solicitor General Kenneth Starr were featured speakers.

Previously, the Conference has been successful in making the process of judicial review of agency action both fairer and more efficient. To remedy the so-called "race to the courthouse" problem, where numerous aggrieved parties seek review of the same agency decision in several courts of appeals, the Conference proposed a system of random forum selection.[19] In addition, the Conference, in another past effort, proposed that the federal appellate courts alter their method of operation to expedite judicial review of agency unwillingness to act.[20]

Over the years, the courts have relied on the scholarship of the Conference and its consultants, or taken note of Conference recommendations, in reaching decisions on important issues of administrative law and process. The Conference's views with respect to the applicability of the Equal Access to Justice Act, and the Model Rules developed by the

---

[19] Recommendation 80-5, Eliminating and Simplifying the "Race to the Courthouse" in Appeals from Agency Action, [1980] Annual Report of the Administrative Conference 66 (1981).

[20] Recommendation 88-6, Judicial Review of Preliminary Challenges to Agency Action, 1 CFR § 305.88-6 (1989).

Conference to implement the Act, were relied upon, or taken into account, in five court decisions in recent years.[21] In addition, the D.C. Circuit pointed to Conference testimony before Congress on the issue of the choice of venue for judicial review of claims of delay in the promulgation of agency rules.[22] A Conference consultant report[23] was cited by the Supreme Court in its 1989 *Coit* decision involving the administrative claims procedures of the Federal Savings and Loan Insurance Corporation.[24] And, as recently as this past January, separate panels of the United States Court of Appeals for the Seventh Circuit pointed to a Conference consultant report dealing with the *Chevron* case[25] in reaching their decisions.[26] One panel characterized the report as "an impressive exposition of the necessity for grounding the *Chevron* doctrine in congressional delegation."[27]

The Strengths of the Conference

The Conference has no power to compel action. Its core activities are the study of the efficiency, adequacy and fairness of the administrative process, the development of recommendations for improvement, and the advocacy of those recommendations in appropriate forums. It is a unique governmental institution -- serving as a proponent of change, a vehicle for basic research in administrative law issues, an instrument of coordination and efficiency, and a testing ground for new or novel ideas.

---

[21] St. Louis Fuel and Supply Co. v. FERC, 890 F.2d 446, 451 (D.C. Cir. 1989); Owens v. Brock, 860 F.2d 1363, 1366 (6th Cir. 1988); Escobar Ruiz v. INS, 838 F.2d 1020, 1024 (9th Cir. 1988) (en banc); Escobar Ruiz v. INS, 813 F.2d 283, 289 (9th Cir. 1987); Hadden v. Bowen, 657 F. Supp. 679, 687 (D. Utah 1986).

[22] Sierra Club v. Thomas, 828 F.2d 783, 790 n.52 (D.C. Cir. 1987).

[23] Baxter, Life in the Administrative Track: Administrative Adjudication of Claims Against Savings Institution Receiverships, [1988] Duke L.J. 422.

[24] Coit Independence Joint Venture v. FSLIC, 109 S. Ct. 1361, 1370 (1989).

[25] Chevron USA v. NRDC, 467 U.S. 837 (1984).

[26] Wisconsin Elec. Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990) and Continental Training Services, Inc. v. Cavazos, 893 F.2d 877 (7th Cir. 1990), both citing Anthony, *When Agency Interpretations Should Bind the Courts* (1988).

[27] Continental Training Services, Inc. v. Cavazos, id. at n.11.

1. The Conference as a Practical Advocate for Change

Agencies and other government entities, "think tanks" and law school professors, all undertake important research into administrative process issues. Some studies are published in learned journals. Regrettably, many fine reports simply find their way to a back shelf. In contrast, because of its public and private membership and permanent institutional structure, the Conference can uncover practical problems, research solutions, propose change, meld a consensus for that change, and -- importantly -- campaign for reform.

The nearly decade-long effort to obtain passage of "race to the courthouse" legislation is an example of the Conference's persistence in working for practical reform. The venue provisions of many regulatory statutes offer aggrieved parties a choice of judicial forum in which to seek review of agency decisions. The general venue provisions historically provided that the court in which the first judicial review petition was filed obtained jurisdiction over all appeals if multiple petitions for appellate review of the same agency decision were filed in two or more circuit courts. So "races to the courthouse," replete with walkie-talkies, open long-distance telephone lines, and, at times, multiple filings by the same party, became a frequent feature of governmental appellate litigation. The system was unfair. As one court noted, there was a potential for determining venue by "splitting minutes on the digital watches worn by parties and timed by calls to the Naval Observatory" or using "split-second electronic timing devices and laser transmissions or some other esoteric procedures which distort the statutory purpose."[28]

Such "races" were also expensive. A Conference consultant estimated that a typical race cost $65,000-$100,000. Parties without the financial wherewithal to compete in sophisticated races were at a disadvantage even before they got into court. Yet no single federal agency or private litigant was affected more than occasionally. So, while the aggregate costs were substantial, no one had an incentive to champion change.

---

[28] Mobil Oil Exploration Co. v. FERC, 814 F.2d 998, 1000 (5th Cir. 1987)

The Conference took up the subject in 1979, engaged a consultant to study it, and produced thorough documentation of the problem and a simple proposal for change -- establish a scheme of random selection where petitions for review of the same agency decision are timely filed in more than one court. The Conference staff drafted the necessary legislation. And, with the help of the American Bar Association, it pressed the case in Congress over several years until the 100th Congress in 1988 enacted legislation to correct the problem.[29]

The nearly two-decade long effort to end the exemption from notice-and-comment rulemaking procedures for so-called "proprietary" functions reflects our ability to effect change, incrementally, over time. Early in its history, the Conference recommended elimination of the Administrative Procedure Act's exemption from notice-and-comment requirements for rulemaking actions associated with the government's so-called "proprietary" activities, i.e., the management of public property, the conferral of grants and benefits, and government loans and contracts. More than a dozen agencies -- including two of the principal benefits agencies, the Veterans' Administration and the Department of Health and Human Services -- promptly and voluntarily complied with the Conference's recommendation. Over more than 20 years, Congress slowly chipped away at that exemption as well. For example, Congress now requires the use of notice-and-comment rulemaking for Medicare regulations.[30] In 1988, Congress, by statute, mandated the use of notice-and-comment rulemaking procedures for regulations promulgated by the Department of Veterans Affairs.[31] In reviewing the legislation, the House Veterans' Affairs Committee pointed approvingly to the Conference's work in this area.[32]

---

[29] Pub. L. 100-236, 101 Stat. 1731 (1988), codified in 28 USCA § 2112 (West Supp. 1989).

[30] 42 USCA 1395hh (West Supp. 1988).

[31] Pub. L. 100-687, 102 Stat. 4106 (1988).

[32] H.R. Rep. 100-963, Part I, 100th Cong., 2d Sess. 27 (1988).

2. The Conference as Basic Researcher

Agencies are mission oriented. They rarely undertake "basic research" into procedural issues. But the Conference can -- and does -- undertake such research into areas that are totally new or experimental and would not likely be initiated by individual agencies. Its effort in the area of negotiated rulemaking is a useful illustration.

Informal rulemaking is now the dominant form of agency decisionmaking in which the public participates. Increasingly, individuals representing environmental, consumer, esthetic, humane and like interests have joined those with a traditional economic stake in agency action as active participants in the rulemaking process. And when they lose, they go to court. Over 80 percent of significant rules issued by the Environmental Protection Agency in recent years, for example, have ended up in court.

Everyone agreed that, to the extent feasible, it was desirable to develop less costly, less time-consuming and less adversarial methods of decisionmaking in the rulemaking context -- methods that will also produce results that are more acceptable to the public. The Conference commissioned an examination of whether regulations could be negotiated among affected interests consistently with statutory objectives, rather than simply imposed by agencies. The Conference's consultant produced a seminal study in 1982.[33]

Since the Conference's 1982 recommendations on the subject,[34] a number of agencies have used the technique successfully. The Conference has conducted a government-wide symposium on alternative means of dispute resolution, which included extensive discussion of negotiated rulemaking, and it initiated a follow-up study of four rulemaking proceedings conducted through negotiation to see what lessons could be learned from actual experience.

---

[33] Harter, Negotiating Regulations: A Cure for Malaise, 71 Geo. L. J. 1 (1982)

[34] Recommendation 82-4, Procedures for Negotiating Proposed Regulations, 1 CFR § 305.82-4 (1989)

Based on this experience, the Conference issued new guidance on the use of negotiated rulemaking.[35]

3. The Conference as an Instrument for Coordination and Efficiency

During my time in government, I have seen instances in which one federal agency, unaware of existing scholarship on a particular subject, sets out to "reinvent the wheel." From time to time, Congress establishes separate or different procedures when a single or uniform set of rules would be far more efficient. I have learned that it is not enough to develop or create a useful administrative law mechanism. One must be vigilant in alerting the bureaucracy and the Congress to the work that has already been done.

To the extent we can do so, we try to coordinate activities in the realm of administrative process to protect against needless dissipation or duplication of effort or resources. We believe that our work can save the government significant money and that only an independent federal establishment like the Conference has the incentive to undertake the necessary advisory, training and clearinghouse activities. As I shall discuss later, a proposed amendment to our organic statute should assist our efforts in this area.

Our current effort to consolidate whistleblower protection activity under a single set of ground rules is one example. It is not our role to promote or discourage whistleblowing or the protection of whistleblowers. The determination of whether, or to what extent, protection of private sector whistleblowers should be an element of more comprehensive regulation of public health and safety is a judgment for Congress. Our role involves process. In 1987, the Conference adopted a recommendation urging *uniform* treatment of private sector health and safety whistleblowers. In other words, if Congress decides (as it has) that certain categories of workers should receive federal protection, or as Congress adds new categories, we recommended that it centralize whistleblower protection in a single agency under uniform procedures, in the interest of efficiency and harmony of results. In furtherance of those procedural objectives, we worked closely with congressional staff and testified in the 100th Congress in connection with the procedural provisions of S. 2095, the Uniform Whistleblower Protection Act, and H.R. 5073, a bill to extend whistleblower protection to workers in the aviation industry. The latter bill passed the House. In the 101st Congress, the Conference testified before the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor in support of the procedural provisions of H.R. 3368, the Employee Health and Safety Whistleblower Protection Act.

---

[35] Recommendation 85-5, Procedures for Negotiating Proposed Regulations, 1 CFR § 305.85-5 (1989)

4. The Conference as Testing Ground

Over the years the Conference has developed a reputation for impartial, nonideological, scholarly yet practical research and analysis. Agencies often ask the Conference to conduct studies that they could theoretically undertake on their own (in-house or through contract). Indeed, 11 federal agencies transferred funds to the Conference pursuant to the Economy in Government Act[36] in fiscal year 1988 and 7 agencies did so in 1989 to obtain Conference expertise and assistance for specific projects involving administrative processes.

The Conference is often able to recruit distinguished scholars as consultants at a lower cost to the government than individual agencies would ordinarily pay for comparable studies. This results from at least four principal considerations. First, the Conference is an independent agency. Scholars are not concerned that their research will be force-fed in a particular direction or that their studies will be perceived as being influenced by the employing agency. Second, the government members of the Conference offer our consultants extraordinary access and cooperation in their research effort. Third, scholars know that consultant reports will be subject to the Conference's unique "peer review" process. The breadth of expertise and exchange of ideas between research scholar and our government and private sector members would not be readily available outside the Conference structure.

---

[36] 31 USCA §§ 1535, 1536 (1983 and West Supp. 1989).

Finally, researchers appreciate that the Conference and its staff will pursue implementation of meritorious recommendations to ensure a "real world" impact. This factor is particularly important when proposals cut across agency lines or invade an agency's turf and might otherwise lack the necessary constituency for adoption.

The Conference's recommendation to facilitate judicial review when agencies fail to act is an excellent example of the Conference's ability to serve as a practical testing ground for the resolution of novel problems. Statutes governing judicial review of agency action ordinarily provide for direct review in the courts of appeals. That principle was reaffirmed by the United States Court of Appeals for the District of Columbia Circuit in the so-called *TRAC* case.[37] But appellate procedures take time. While such procedures are fine for customary review of agency action, those who litigate against the government and seek prompt judicial scrutiny before an agency has acted, or when it refuses to act, find the procedures cumbersome. A public member of the Conference asked us to study the issue.

A Conference consultant concluded that the *TRAC* decision was doctrinally unsound. He also argued that the decision had practical deficiencies. To remedy these failings, he advocated a scheme of concurrent district court and court of appeals jurisdiction whenever courts were asked to review any type of preliminary agency action.

The consultant's report produced spirited debate within the committee and at the plenary session. Most Conference members, both inside and outside government, were not as interested as the consultant in the doctrinal aspects that were a significant part of his report. They were more interested in the practical effects. By and large, the agencies opposed the consultant's recommendations. They were comfortable with court of appeals practice, where judges had developed an expertise in agency cases. Agencies were unwilling to support a shift to district court review. As things evolved, even the private practitioners were largely unconcerned about most types of preliminary challenges to agency activity. They were concerned principally about delay. Although the committee was prepared to limit its recommendation to delay cases, the plenary session returned the matter to the committee for further exploration.

---

[37] Telecommunications Research & Action Center v. FCC, 750 F.2d 70 (D.C. Cir. 1984).

The chairman of the Conference's Judicial Review Committee decided on a novel approach. He asked for a meeting with D.C.-Circuit Chief Judge Patricia Wald and Judge Harry Edwards, author of the *TRAC* opinion, to discuss its practical ramifications. What emerged from that meeting was an agreement that the court would modify its internal rules of practice to ensure expedited handling of cases alleging an agency's refusal to act. The committee adopted the compromise, the Assembly approved the recommendation, and the court issued an official order modifying its rules.

The compromise reflected Conference activity at its best. The consultant's report was a thoughtful analysis of a troublesome issue with a focus on jurisprudential concerns. The interaction of private and government members through the committee and plenary processes redirected the debate to more precise, practical issues. New, consensus alternatives emerged. And, finally, the Conference served as the instrument through which government lawyers and the private bar could meet with members of the court to address and resolve the issue in a nonadversarial setting.

Conference Jurisdiction

A key debate at the time of the Conference's creation concerned the scope of its operations. There were some who wanted the Conference to focus entirely on issues arising under the Administrative Procedure Act. There were those who espoused, instead, a more expansive view of our responsibilities. The latter group prevailed. As a result, the Conference operates under a congressional charter that extends its mission to the full reach of procedural, management and organizational issues affecting the governmental process. The Administrative Conference Act directs the Conference to study *administrative procedure*, which is expressly defined as:

> procedure used in carrying out an administrative program and is to be *broadly construed* to include *any aspect* of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion. (emphasis added)[36]

From time to time individuals or agencies complain when our recommendations affect their vital interests. Because process can frequently affect substance, and the Conference is often at the cutting edge of process issues, some perceive our efforts as overstepping our mandate. It is not our intent to affect policy issues that are the province of individual agencies or the Congress. Nor do I believe we have done so during my tenure at the Conference. Rather, as this committee is well aware, what the Conference often does is to review the procedural ramifications of matters that are under substantive review by agencies or Congress -- as we did, of course, in the immigration area. Our interests are wide ranging precisely because Congress' legislative interests are wide ranging. How things get done is ineluctably tied to what Congress has directed to be done. In that respect we study the procedural warp and woof of the administrative state. I believe our track record in implementing our recommendations -- whether they involve the procedural aspects of financial services regulation, the coordination of whistleblower procedures in areas in which Congress has chosen to accord workers whistleblower protection, or the establishment of procedures to regulate conflicts of interest -- demonstrates that we have looked at the right issues in accordance with our statutory directive.

Conference Themes

Because our mission is so encompassing, and our resources are limited, it is essential that we channel our research and implementation efforts into selected thematic areas, attempting to predict which subjects are the most likely candidates for significant improvement. Our task over the past two years was made somewhat easier because, as part of the fiscal years 1988 and 1989 appropriations process, this committee directed us to examine certain subject areas -- notably, the fairness and efficiency of various aspects of immigration procedure; administrative procedures associated with the stabilization and revitalization of the health of the nation's banking industry; and the effectiveness of the grievance procedures and existing equal opportunity laws in the federal workplace. Several projects in all three areas were successfully completed in fiscal year 1989 and more will be completed in fiscal year 1990.

---

[36] 5 USCA § 572(3) (1977)

In addition, on its own initiative, the Conference maintains an active and ongoing interest in the procedures that affect ethics in government issues, specifically the effect of the federal conflict-of-interest laws on administrative process, alternative methods of dispute resolution, and science and health matters. We pursue, as well, our "bread and butter" initiatives in the areas of rulemaking, adjudication and judicial review of agency action.

The Conference conducted its usual two plenary sessions during fiscal year 1989; one plenary was held in December 1988 and another was held in June 1989. We held a plenary session in December of 1989 and plan one more such session for June 1990. During the most recent period, the Conference adopted recommendations covering the administrative law waterfront. The text of all 1989 recommendations is attached as Appendix B.

I described earlier our significant efforts in examining numerous procedural issues that arose in connection with implementation of the nation's immigration laws. In the current year, and into fiscal year 1991, the Conference shall continue its review of procedural issues affecting the regulation of the nation's financial institutions and the health care industry; shall undertake studies of two issues potentially affecting conflicts of interest; and shall continue its work in the area of developing less costly and time-consuming alternatives to conventional administrative adjudication and rulemaking.

1. Procedures Employed by the Banking Regulatory Agencies

The Special Committee on Financial Services Regulation was created late in 1986 in order to focus the efforts of the Conference on the procedural and structural aspects of governmental institutions involved in the regulation of financial services. The subject of financial services regulation is especially pertinent today because the industries involved are in a period of rapid change. Federal deregulatory initiatives have been accompanied by the breakdown or erosion of longstanding inhibitions on interstate banking and the combination of commercial banking, securities, insurance and related industries.

There are two reasons to study financial services regulation. First, the banking agencies have been largely outside the mainstream of the development of administrative law and procedure. This has resulted, at least in part, from the perceived needs for confidentiality and prompt action in dealing with banks in financial difficulty. Financial institutions have traditionally been regulated informally or voluntarily by what has at times been described as "regulation by lifted eyebrow." Second, there is a growing overlap of regulatory responsibilities among banking agencies. At least five agencies have regulatory responsibilities in the area of financial services -- the Comptroller of the Currency (federally chartered banks), the Federal Reserve Board (state-chartered banks that are members of the Federal Reserve System and bank holding companies), the Federal Deposit Insurance Corporation (insures most banks and regulates banks that are not members of the Federal Reserve System), the Office of Thrift Supervision, formerly the Federal Savings and Loan Insurance Corporation (savings and loan companies), and the National Credit Union Administration (credit unions).

Kenneth J. Bialkin, a member of the law firm of Skadden, Arps, Slate, Meagher & Flom in New York, has been the Chair of the Financial Services Committee since its inception. United States District Judge Stanley Sporkin is Vice Chairman. The committee does not involve itself in the basic policy questions affecting financial institutions. Rather, it focuses on the procedural and structural aspects of government regulation of financial services.

The Conference has commissioned eight studies of the procedures affecting the regulation of financial services. The first of these studies, Fordham Law School Professor Michael Malloy's review of adjudication practices and procedures of the federal bank regulatory agencies, was reviewed at our December 1987 Plenary Session, where the Conference recommended various steps to improve the formal adjudicatory process with respect to regulatory enforcement, including the development of uniform rules of practice and procedure for all banking agencies.[39] The House Government Operations Committee report entitled "Combating Fraud, Abuse and Misconduct in the Nation's Financial Institutions: Current Federal Efforts are Inadequate" (H. Rep. No. 100-1088) endorsed our recommendations and they were included in Public L. 101-73.

Two projects were completed during 1988. A recommendation adopted at our June 1988 Plenary Session, based on a report by Professor Alfred Aman of Cornell University, urged the Federal Reserve Board to provide by regulation that its 91-day rule governing action on applications under the Bank Holding Company Act would be extended only if highly significant information is received that warrants reopening an applicant's file.[40] In September, 1988, the Conference acted on Duke University Law Professor Lawrence Baxter's report concerning the proper locus for adjudication of claims against failed savings and loan institutions. The recommendation took no position on the statutory and constitutional questions at issue in litigation then pending in the Supreme Court but urged Congress to examine whether liquidation claims should be handled administratively or in court. The Conference proposed procedures to be followed if Congress decided that an administrative adjudication process is the more desirable way to resolve such claims.[41] Certain of these recommendations were adopted by Congress when it enacted legislation reorganizing the thrift regulatory agencies.

---

[39] Recommendation 87-12, Adjudication Practices and Procedures of the Fedral Bank Regulatory Agencies, 1 CFR § 305.87-12 (1989).

[40] Recommendation 88-3, The Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act, 1 CFR § 305.88-3 (1989).

Five projects are pending. The first is an examination of bank failures and risk monitoring by Professor Jonathan Macey of Cornell University and Professor Geoffrey Miller of the University of Chicago. The second is a study of the bank examination process and informal enforcement practices by Professor Roy Schotland of the Georgetown Law School. The third study, by Professor Lawrence Baxter of the Duke Law School, is an examination of the enforcement procedures used by the bank regulators. The fourth study, by Professor Michael Malloy of the Fordham Law School, reviews how the bank regulatory agencies enforce the Securities and Exchange Act of 1934. Finally, the Conference commissioned a study of government-sponsored enterprises, such as Fannie Mae, Sallie Mae, etc. This project will be prepared by attorney Thomas H. Stanton.

The Conference has developed an ongoing liaison with various Senate and House banking committee members and staff to help ensure a thorough study of these issues which will be of benefit to Congress as it examines more general issues affecting the banking and related industries.

2. Procedural Framework for Ethics in Government

The special Conference Committee on Ethics in Government, established in late 1987, continued to study the need for improvements in the federal government's system for regulating conflicts of interest. In June 1989 the Conference adopted two formal recommendations on this subject.

---

[41] Recommendation 88-8, Resolution of Claims Against Savings Receiverships, 1 CFR § 305.88-8 (1989)

One of these recommendations urged Congress to establish special conflict-of-interest disclosure rules for members of federal advisory committees.[42] Under the Conference's scheme all committee members would be required to disclose a limited amount of information about their financial interests, regardless of their classification as special government employees or as representatives of particular interests. In addition, agencies would be obliged to clearly communicate to advisory committee members the conflict-of-interest restrictions that applied to them.

The second recommmendation called upon Congress to amend the Ethics in Government Act's executive branch public financial disclosure requirements to achieve a better balance of the costs and benefits of such disclosure.[43] It included recommendations for lowering the threshold for reporting liabilities and for eliminating unnecessary detail in the reporting of assets, liabilities, and gifts. The Recommendation was submitted to the Counsel to the President and to the President's Commission on Federal Ethics Law Reform.

The Conference's initiative on regulation of government conflicts of interest bore fruit when the Ethics Reform Act of 1989 (Pub. L. 101-194) was signed by President Bush on November 30, 1989. The new Act implemented Conference Recommendation 88-4 that recommended Congress amend the Internal Revenue Code to permit deferred taxation of gains realized when appointees to government positions were required to divest property to satisfy conflict-of-interest requirements. The Recommendation had been endorsed by both the President's Commission on Federal Ethics Law Reform and the National Commission on the Public Service (the Volcker Commission), and President Bush included the proposal in his proposed ethics legislation. Section 502 of the Ethics Reform Act of 1989 establishes procedures for deferral of taxes when the President or the Office of Government Ethics determines that the sale of property is necessary to comply with federal ethics laws.

---

[42] Recommendation 89-3, Conflict of Interest Requirements for Federal Advisory Committees, 54 Fed. Reg. 28969 (1989).

[43] Recommendation 89-6, Public Financial Disclosure by Executive Branch Officials, 54 Fed. Reg. 28973 (1989).

The Ethics Reform Act (section 405) also dealt with the issue of advisory committee members' conflicts of interest by establishing a new waiver provision in 18 U.S.C.§ 208, coupled with public disclosure of relevant financial information when such waivers are granted. The new procedure, although not the precise procedural remedy recommended by the Conference, will nonetheless alleviate problems agencies and advisory committee members wrestled with under prior law.

The Conference currently has under review two other aspects of government ethics. One study will examine the role of government and private attorneys in representing federal employees charged with wrongdoing. The other will explore impediments to pro bono representation of private clients by government attorneys. As the committee may be aware, only two weeks ago the Director of the Office of Personnel Management, Constance Newman, who serves, coincidentally, as a member of the Conference's Council, formally encouraged federal employees to participate in volunteer activities associated with helping those who need legal counsel and other services. She properly reminded employees that such activities must be conducted in accordance with applicable conflict-of-interest requirements. In what we believe will be a most timely project, the Conference will review whether existing regulations governing such assistance can be modified to facilitate Director Newman's injunction to federal employees while still preventing any genuine conflict of interest with the government lawyer's role as a public servant. For the committee's information, a copy of Director Newman's memorandum is attached as Appendix A.

3. Alternative Methods of Dispute Resolution

The Administrative Conference has adopted several recommendations to promote greater use of alternative means of dispute resolution (ADR), including mediation, mini-trials, negotiation, and arbitration. The Conference has developed a roster of "neutrals" for various kinds of alternative dispute proceedings and has assisted agencies in training board of contract appeals and others in using various dispute mechanisms. At the June Plenary, the

Conference adopted Recommendation 89-2 dealing with the management of disputes by the government's contracting officers. This recommendation suggests steps to increase the ability and authority of contracting officers to resolve contract disputes. Recommended steps include agency support of alternative dispute resolution techniques and increased training of contracting officers in ADR techniques.

The Conference has worked informally with agencies to assist their use of these new methods. We provided training and support for the boards of contract appeals and others on using minitrials in contract disputes. We offered training as well for administrative law judges at the Occupational Safety and Health Review Commission, and officials at the Environmental Protection Agency and other agencies on improved settlement methods. The Conference assisted the Forest Service with training in mediating land management disputes and is cooperating with the U.S. Court of Appeals for the D.C. Circuit Court Administrator to provide training in ADR techniques for judges and mediators participating in that circuit's new dispute resolution program.

Following the initial successes of the Federal Aviation Administration and the Environmental Protection Agency in using negotiated rulemaking, the Administrative Conference re-examined agency experience in 1985, and in Recommendation 85-5, Procedures for Negotiating Proposed Regulations, refined its earlier advice. The Office of the Chairman has organized a "roundtable" on negotiated rulemaking consisting of agency representatives who meet periodically to exchange information on practical aspects of negotiated rulemaking A number of agencies are now actively engaged in various stages of negotiated rulemaking proceedings in accordance with the Conference's Recommendations.

The Conference will continue its work in ADR by completing installation of a government-wide roster of ADR "neutrals" and by studying confidentiality concerns associated with mediation. In addition, it will continue its examination of the use of arbitration and mediation in the U.S.-Canada Free Trade Agreement and examine the implications of international standard setting and EC-1992 for administrative agencies and regulatory standards. The use of ombudsmen in the Internal Revenue Service, EPA and other agencies will be examined to see whether this ADR tool has potential for broader use throughout the federal government. Finally, the Conference will continue its efforts to encourage agencies to use negotiated rulemaking in appropriate cases.

4. Procedural Issues in Science and Health Care Administration

The Conference continues its considerable efforts in the area of health care regulation. In November 1988 the Conference received from Timothy Jost, Professor of Law and Hospital and Health Services Administration at Ohio State University, a comprehensive analysis of the numerous administrative law issues involving the Medicare utilization and quality control Peer Review Organization (PRO) programs.

At the June 1989 Plenary the Conference adopted a recommendation on this topic which proposed changes in the procedures for imposing sanctions and offered ways to improve the communication of PRO decisions and HHS policies to Medicare beneficiaries and the public.

In a somewhat related vein, the Conference, with the help of a study by Professor Sidney Shapiro of the University of Kansas School of Law, examined the experience of federal agencies in attempting to regulate the rapidly developing field of biotechnology. While new techniques of altering the genetic structure of organisms promise great benefits in medicine, agriculture, and manufacturing, they also raise concerns about safety and environmental protection. Under current law, genetically-engineered organisms are regulated under a variety of statutes intended to protect the public. The Conference, in Recommendation 89-7, Federal Regulation of Biotechnology, emphasized the importance of continued interagency coordination of regulatory activities. The Conference believes that the Office of Science and Technology Policy's Biotechnology Science Coordinating Committee (BSCC) should have primary responsibility for identifying issues, exchanging information, and preparing reports on issues common to several agencies. Responsibility for establishing uniform policies, however, should be retained by the Office of Management and Budget working in coordination with BSCC.

The Conference did not see the need at the present time for new legislation in this area but urged the President to make coordination of the government's activities relating to biotechnology a high priority. Recommended steps included monitoring the effectiveness of interagency coordination and enlarging the membership of the BSCC, as appropriate. The Recommendation urged the President's Science Advisor to establish a policy for the BSCC that will foster opening its proceedings to the public. The Conference also suggested ways that individual regulatory agencies can improve public participation in agency decisionmaking and can meet the public's need for biosafety information without divulging confidential business information.

In the coming year, the Conference will continue to examine varying aspects of health care regulation. A study and preliminary evaluation of the procedural aspects of the national child vaccine injury compensation program has been initiated. In addition, the Social Security Administration (SSA), as part of a review of its appeals procedures in the Social Security disability program, asked the Conference to prepare a report that summarized appeals procedures in other disability programs, synthesized previous Conference recommendations, analyzed relevant statutes, and made some recommendations for change. This report was submitted to SSA in June, and will be considered as a basis for additional formal Conference recommendations in 1990.

The Conference has also begun consideration of how information about various risks can be used as an alternative or supplement to federal regulation in areas affecting health, safety, or the environment. The Conference's consultant on this topic is Professor Michael Baram of the Boston University School of Law.

5. Administrative Procedure Act Issues

While the Conference has focused on current themes, we remain attentive to cross-cutting issues of the administrative process, including problems arising under the Administrative Procedure Act. Recently, for example, the Conference adopted Recommendation 89-8, urging agencies to meet indexing requirements under the Freedom of Information Act by creating a subject matter index of all significant adjudicatory decisions. This index would afford citizens information useful in dealing with the agencies and assist the development of agency standards and policies on general issues and recurring questions. The Recommendation suggested that indices should be either universal or selective. The selective index should include all significant decisions, whether or not they are considered precedential. The agency index, which should be fully disclosed and readily available to the public, should cover the adjudicatory decisions of the agency's highest level tribunal. The agencies should also consider whether to index significant lower level decisions that have become final.

In addition, the Conference is now reviewing the history of recent disputes over Congressional access to internal agency memoranda and Commissioner's notes and whether better methods of resolving such disputes can be identified.

The Conference also expects to make major progress on its two-year effort to develop model rules of practice for agency adjudication. A survey of agency use of hearing officers who are not administrative law judges is being conducted and the survey results may result in a need for Recommendations.

The Conference's Committee on Judicial Review is exploring the results of judicial remands of cases to administrative agencies as well as the appropriate scope of judicial deference which should be given agency decisions. Also being considered is the allocation of adjudicative responsibilities between agencies and courts, *i.e.*, whether adjudicative responsibility should be in the administrative agencies, Article I courts, or Article III courts.

A complete list of pending projects is attached as Appendix I.

Clearinghouse, Training and Advisory Activities

The Conference is directed by statute to "arrange for interchange among administrative agencies of information potentially useful in improving procedure." See 5 U.S.C. 574(2). We widely disseminate our research reports, alert government officials, including all members of the Senior Executive Service, to our projects, and sponsor formal and informal meetings for agency personnel, and produce compilations and documents which are useful to agencies generally.

The Conference chairs informal groups such as the Council of Independent Regulatory Agencies. The Council of Independent Regulatory Agencies (CIRA) is an informal organization composed of the chairs of the thirteen major independent regulatory boards and commissions and the Chairman of the Administrative Conference, who also serves as Chairman of CIRA. At CIRA meetings, agency chairs exchange ideas concerning governmental and regulatory issues and problems, and discuss these issues with select members of the Executive branch, academics, and members of Congress. This group meets on a regular basis, the typical format being a breakfast meeting at the White House with a key member of the Administration as the group's guest. The agencies whose chairs participate in CIRA are the Commodity Futures Trading Commission, Consumer Product Safety Commission, Equal Employment Opportunity Commission, Federal Communications Commission, Federal Energy Regulatory Commission, Federal Maritime Commission, Federal Reserve System, Federal Trade Commission, International Trade Commission, Interstate

Commerce Commission, National Labor Relations Board, Nuclear Regulatory Commission, and the Securities and Exchange Commission. Recent speakers at CIRA breakfasts have included senior members of Congress and Senior White House staff.

We sponsor each spring a seminar for members of independent regulatory agencies to permit them to step away from their everyday work and address common problems of the regulatory process. Each fall, we offer a seminar for Congressional staff that focuses on the legislative drafting implications of administrative law.

The Conference also held a number of colloquia and seminars during 1989. The Colloquy Series is designed to allow for the presentation and discussion of issues in administrative law and regulatory procedures that affect administrative agencies. Four successful colloquia have already been held:

-- **Ethics in Government: Where Do We Go From Here?** C. Boyden Gray, Counsel to the President and the Honorable Barney Frank, Congressman (D-Massachusetts) exchanged views on pending ethics initiatives.

-- **Procedural Reform of the Savings and Loan Industry and the New Banking Bill** was the topic discussed by Lawrence G. Baxter, Professor, Duke University School of Law, Richard C. Breeden, Assistant to the President, and M. Danny Wall, Chairman, Federal Home Loan Bank Board.

-- **The Drug Approval Process in the AIDS Era** featured James T. O'Reilly, Chairman ABA Committee on Food, Drug and Cosmetic Law, William B. Schultz, Senior Attorney, Public Citizen Litigation Group, and Frank E. Young, M.D., Commissioner, Food and Drug Administration.

-- **Administrative Law Proposals of the Federal Courts Study Committee: A Forum** Professor Harold Bruff, University of Texas Law School, Peter Strauss, Columbia University Law School, and Judge Stephen F. Williams, U.S. Court of Appelas for the D.C. Circuit, exchanged views on the recent proposals made by the Federal Courts Study Committee.

The Conference has already begun to plan its 1990 schedule of colloquia which includes the following:

-- **Providing Economic Incentives in Environmental Regulation** will be the topic discussed by E. Donald Elliott, General Counsel of the Environmental Protection Agency, Richard B. Stewart, Assistant Attorney General of the Lands and Natural Resources Division, and David Hawkins of the Natural Resources Defense Council.

-- **British Approaches to Administrative Law** will be discussed by D.G.T. Williams, President of Wolfson College, Cambridge.

The Conference, with the support of the Department of Commerce, also sponsored an all-day program on the alternative dispute resolution provisions of the U.S. - Canada Free Trade Agreement. A full list of Conference colloquia between 1987 and 1990 can be found in Appendix H.

Conference publications are an equally important part of the clearinghouse function. During the year, the Conference published three newsletters which contained information useful to agency personnel concerning ongoing research activities and other Conference initiatives. These newsletters, which are provided to all members of the Senior Executive Service as well as agency personnel directly involved in administrative law issues, prompted numerous requests for Conference publications and research reports relevant to current agency activity. Work was completed on the Negotiated Rulemaking Sourcebook which collects and analyzes in one place many materials useful to agency persons planning and implementing a negotiated rulemaking proceeding. The Sourcebook is being printed and we expect it to be released any day now. Publication of a study guide on the constitutional issues in arbitration was completed and copies were provided to interested members of Congress and their staffs who were working on legislation dealing with alternative methods of dispute resolution. The Conference also produced a monograph describing the powers and responsibilities common to the numerous multi-member independent boards and commissions. During the current fiscal year, the Conference expects to complete its revision of its widely-used *Guide to Federal Agency Rulemaking*. Demand for a new revision has been high.

The Conference library, a Federal Depository Library, contains many administrative law materials unavailable in less specialized collections. It responds to continuous requests for assistance.

Workload and Budgetary Accomplishments

Substantial productivity gains over the last several years, coupled with a significant increase in the amount of money received by the Conference through inter-agency transfers under the Economy in Government Act, have permitted us to double the research output while raising our clearinghouse and implementation efforts to acceptable levels.

Travel expenditures as a proportion of the budget have been reduced when compared with historic levels -- down to under 4% in 1989 compared with slightly over 5% in the first 10 years of the Conference's history. Indeed, by rigorously enforcing travel regulations, encouraging early reservations through a GSA contractor travel service, and combining meetings and other activities to reduce necessary trips, travel expenditures in fiscal year 1989 were actually held below fiscal year 1988 levels. This is so despite our ongoing efforts to ensure that neither our membership nor our pool of consultants reflects exclusively an "inside the Beltway" orientation.

Although Federal Register, postage and paper charges continued to rise, Conference printing costs were reduced by substituting desktop publishing on microcomputers for makeup and typography at GPO. This required hiring an additional employee to do layout and composition at the Conference. As an offset, I elected to terminate a contract we had for public information services and not to replace a clerk who had resigned. In fact, contracts for both public information and mailing services were terminated and the tasks taken over by Conference personnel.

Plans for the Future

As this committee is aware, we have added personnel to meet our recent workload increase, although we absorbed the salary costs of these staff increases within our 1989 and 1990 budgets and remain one FTE below our authorized level of 25.

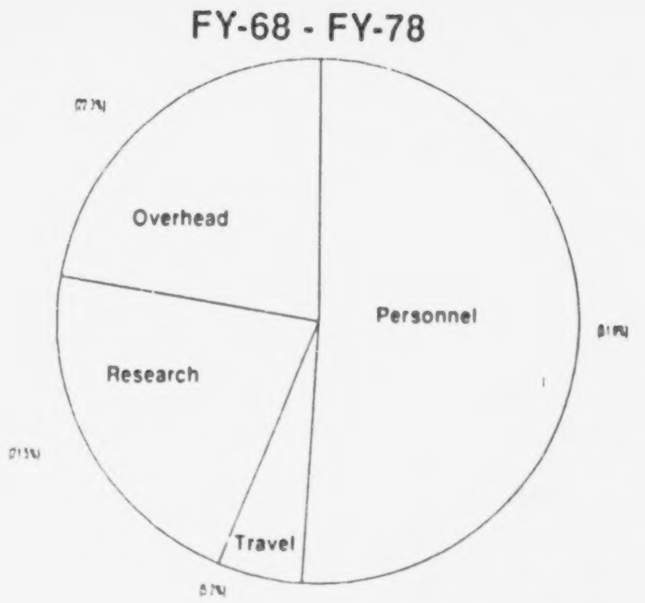
The Conference's appropriations remained $1,865,000 from fiscal year 1988 through fiscal year 1990. The Conference's 1991 appropriations request, however, is for $2,079,000. In light of this increase, in fiscal year 1991 the Conference will move in three principal directions. First, to satisfy our statutory mandate "to arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure," we shall maintain our current level of clearinghouse and informational activity -- including our program of seminars, colloquies, and publications. Second, we shall make efforts to reduce our dependence on inter-agency transfers as a source of research funds. Finally, we will continue to couple a thematic approach to administrative process issues affecting contemporary concerns with the Conference's long-standing interest in cross-government issues of rulemaking, adjudication, judicial review and public information.

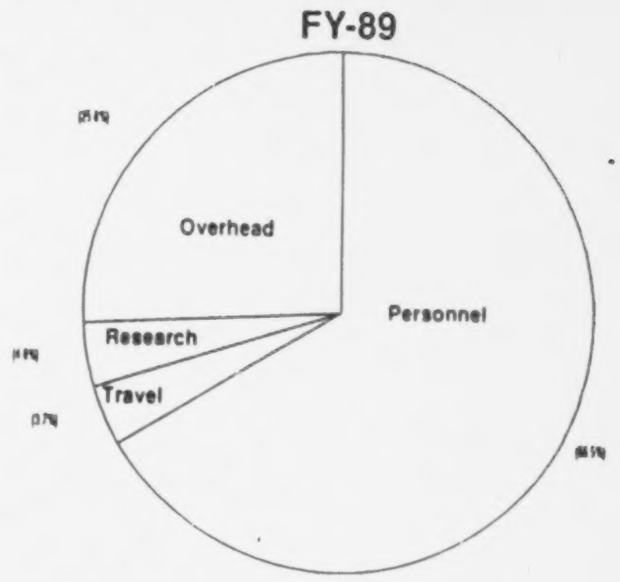
To some extent our areas of thematic interest will continue into fiscal year 1991, and even beyond. As I noted earlier, we shall continue to study the procedures employed by the bank regulatory agencies, the procedural framework for ethics in government, alternative methods of resolving government disputes, and the procedural elements of scientific regulation and health care administration.

As resources permit, we shall expand our efforts into at least two new areas. The first of these involves the process problems associated with the government regulation of science and technology. We have already begun work in this area. In a project that melded concerns over public information with the technology of modern government, Villanova Law Professor Henry Perritt reviewed the problems associated with the acquisition and release of information held by federal agencies in electronic form. His study led the Conference to adopt Recommendation 88-10, *Federal Agency Use of Computers in Acquiring and Releasing Information*. Professor Sidney Shapiro of the University of Kansas School of Law examined the experience of federal agencies in attempting to regulate the rapidly developing field of biotechnology. His work resulted in Conference Recommendation 89-7, *Federal Regulation of Biotechnology*.

Second, we will examine whether there are administrative law or procedure problems which hinder American competitiveness in world markets, particularly in light of the emergence of a more united European Community in 1992. In this connection, the Conference recently began work on two projects. First, Professor John Jackson of the University of Michigan and Professor William J. Davey of the University of Illinois are examining agency practice and judicial review under the U.S. antidumping and countervailing duty laws. Second, Professor Howard N. Fenton of Ohio Northern University is reviewing process issues raised in connection with the administration of the Export Administration Act.

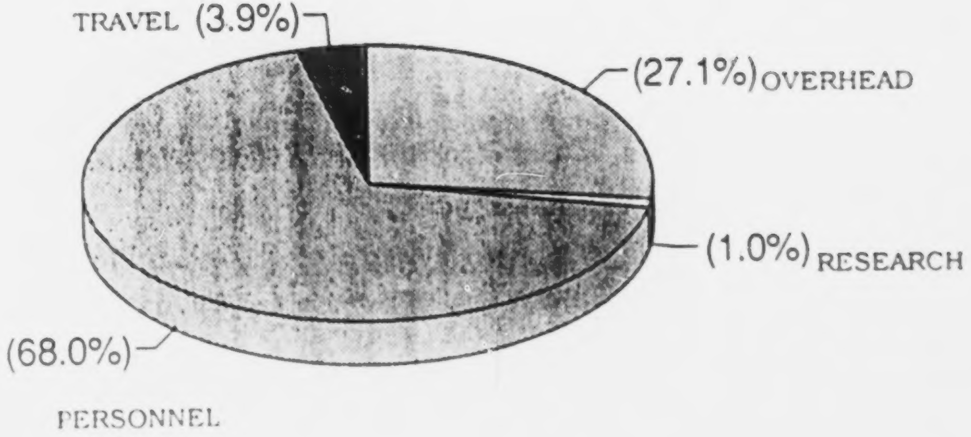
Our fiscal year 1991 request should permit us to devote some additional percentage of our appropriated funds to our research budget. As can be seen in the charts following this page, the research budget historically accounted for slightly more than 20 percent of the funds Congress appropriated. In 1989 that percentage dipped to about 4 percent, and we


FY-68 - FY-78


FY-89

OVERVIEW OF ACTIVITIES

Source - Report by the U.S. General Accounting Office
GGD-90-13, February 4, 1980 and ACUS FY-91 Budget Request



OVERVIEW OF ACTIVITIES - FY-90

project that research will account for only 1 percent of *appropriated* funds in 1990. By and large, fiscal year 1990 will be one in which we complete projects already in the pipeline or undertake research underwritten by funds transferred from other agencies.

The President's budget requests a $214,000 increase in appropriations for fiscal year 1991 over the 1990 level. But approximately $85,000 of that must be used to cover the salary increases for the Chairman and the Conference's three senior executives stemming from Congress' enactment of the Ethics Reform Act of 1989, and, when coupled with other statutorily mandated salary increases, will account for roughly $127,000 over 1990 payroll costs. We plan to devote the remaining increase contained in the President's 1991 budget -- somewhere between $87,000 and $110,000 depending on our ability to allocate expenses among other activities -- to fund approximately 5-6 new, small, self-generated projects.

At present cost levels, we need approximately $200,000 annually to fund a research agenda of 8 to 10 relatively small, self-contained projects. We have been able to use appropriated funds for clearinghouse and implementation activities in recent years because other agencies have been prepared to underwrite research efforts we have undertaken for them. The Conference received $200,000 in inter-agency transfers in 1987 and 1988, and approximately $300,000 in 1989, which we dedicated largely to research. Indeed, these amounts essentially constituted the Conference's research budget over the past 3 years.

While we are generally prepared to undertake worthwhile research projects for other agencies if funded through inter-agency transfers f funds, the Conference should not rely on inter-agency transfers as the primary source of its research agenda. First, such reliance necessarily prevents the Conference from conducting research in those areas that may require improvement but are not a priority for any agency. This is particularly true of procedural issues that cross agency lines or invade an agency's turf. Second, and just as important, heavy reliance on inter-agency funds creates at least a potential that the Conference's objectivity could be compromised or perceived as compromised. Finally, it reduces the likelihood that we can conduct large-scale studies.

Absent Congressional direction, however, we do not plan to redirect resources to the areas of statistics collection, additional training, or the conduct of procedural audits.

Statistics Collection. The Conference has a statutory obligation to collect statistics concerning activities under the Equal Access to Justice Act and report annually to Congress.[44] In fulfillment of that responsibility, required reports were brought up to date in the past year and we shall continue to fulfill this obligation in a timely fashion. Absent Congressional guidance, however, the Conference does not contemplate any significant re-entry into the statistics gathering business.

In particular, we do not intend to resume collection of caseload and individual case data in connection with formal proceedings at almost 30 agencies and departments. This government-wide inventory, discontinued in 1980, provided a unique reference for persons concerned with issues of procedural reform or agency organization and management. In 1987, during debate over what type of civil penalty enforcement should be included in the Fair Housing Amendments Act, the Department of Justice urged that conciliation efforts, if unsuccessful, should lead to court enforcement. An alternate view, preferred by civil rights attorneys, would have required hearings before administrative law judges with review in the courts of appeals. Both sides asked the Conference for case data on the efficiency of administrative proceedings but we could supply data only through 1978.

Training. Likewise, without specific direction from Congress, we will not significantly expand our current training efforts. More specifically, we will not undertake any systematic government-wide training of agency officials about the Conference's numerous recommendations -- particularly those recommendations that cross agency lines. While I believe that the training of agency officials about administrative law issues is important, the present Conference focus is on research and other implementation activity.

---

[44] 5 U.S.C. § 504 (e) (1982)

We were fortunate that, in 1988 and 1989, we were able to recruit on a non-reimbursable basis the services of Wallace Warfield, former Acting Director of the Department of Justice's Community Relations Service (CRS), to be a Distinguished Visiting Fellow with the Conference, specializing in alternative means of dispute resolution.[45] Mr. Warfield was a significant participant in the development of an ADR training program over the last 2 years. But there is no guarantee that we can recruit this type of talent without cost to the Conference in the future.

Procedural Audits. Finally, absent a request from another agency to conduct large-scale studies on a reimbursable basis, we do not plan to undertake what was described in a Senate document as a "procedural audit."[46] In such an audit, we examine comprehensively an agency's overall statutory authority, its regulations, and its undocumented practices, with emphasis on procedures affecting individuals who must deal with the agency. Our purpose is to recommend across-the-board improvements in agency procedures. Our recent studies to examine the disability claims procedure of the Social Security Administration[47] are similar to a procedural audit of an important aspect of the work of this agency but such studies were conducted in large measure on a reimbursable basis.

---

[45] Mr. Warfield began his career as a community organizer and served as Director of Community Organization of the Lower West Side Community Corporation in New York City. He has been a conciliator with the CRS since 1968. Before becoming Acting Director, he was Associate Director for Field Coordination with the rank of Deputy Assistant Attorney General.

[46] Staff of Senate Comm. on Governmental Affairs, 95th Cong., 2d Sess., Study of Federal Regulation, Vol. VI: Framework for Regulation 251 (Comm. Print 1978).

[47] Recommendation 87-6, State Level Determinations in Social Security Disability Cases 1 CFR § 305.87-6 (1989), and Recommendation 87-7, A New Role for the Social Security Appeals Council, 1 CFR § 305.87-7 (1989).

Conclusion

I am aware that we continue to live in a period of fiscal restraint. To do its part, the Conference has not sought an appropriations increase for three years. We have, in the past three years, more than doubled our activity level largely through productivity gains. To a considerable degree, however, we have exhausted our ability to increase our output through productivity gains alone. The President's request for a modest increase in the Conference's appropriations for fiscal year 1991 recognizes this fact of life.

It is my hope that during this period of fiscal restraint the subcommittee will focus on the overall efficiency of the Conference's operation. Fiscal restraint and efficiency make this the precise time to strengthen the Conference's efforts to streamline the administrative process. The Conference's work often results in considerable savings to the government and to the citizens who seek to use the administrative processes in their dealings with government. I think of our budget, at least in part, in the nature of "seed money" which is likely to be repaid in enhanced efficiencies throughout the government. Moreover, for a very modest cost the United States receives tremendous value in the form of volunteered expertise from Conference members.

This is also not the time to abandon the federal government's historic, forty year effort to make the manner in which it deals with its citizens more fair and equitable -- even recognizing that enhanced fairness and equity carry a pricetag.

I welcome the varied roles which the Administrative Conference performs in response to Congressional direction or the suggestions of others interested in the administrative process. We have accomplished quite a lot in the past year and I look forward to significant achievements in fiscal year 1991.

I. SUMMARY FIGURES

Dollar Amounts

1989 appropriation	$1,845,000
1990 appropriation	$1,865,000
1991 request	$2,079,000

Appropriation Language

For necessary expenses of the Administrative Conference of the United States, established by the Administrative Conference Act, as amended (5 U.S.C. 571 et seq.) and not to exceed $1,000 for official reception and representation expenses; [$1,865,000] $2,079,000.

Estimates of Programmatic Application of Funds
(in thousands of dollars)

	Actual 1989	Est'd 1990	Est'd 1991
General Administration	409	415	453
Personnel Compensation and Benefits	1,235	1,310	1,439
Formal Recommendations (Research; reports)	96	63	108
Implementation and Advisory (Agency assistance)	72	77	43
Clearinghouse (Information interchange)	33	0	36
Budget Authority	1,845	1,865	2,079
Outlays	1,823	1,827	2,024
Reimbursable Programs			
Obligation Authority	301	130	50
Outlays	255	120	46
Totals: Direct and Reimbursable Programs			
Obligation Authority	2,146	1,995	2,129
Outlays	2,078	1,985	2,070

Personnel Resources--FTEs

1989 Actual	1990 Estimate	1991 Estimate
24	24	24

STANDARD FORM 300

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
PROGRAM AND FINANCING

(in thousands of dollars)

Identification code 95-1700-0-1-751	89	90	91
Program by activities:			
Direct program:			
00.01 01 General administration------	409	415	453
00.02 01 Personnel compensation and benefits-------------------	1,235	1,310	
00.03 01 Formal recommendations------	96	63	
00.04 01 Implementation and advisory	72	77	43
00.05 01 Clearinghouse---------------	33	0	36
00.01 01 Total direct program-----	1,845	1,865	2,079
01.01 01 Reimburnable program	301	130	50
10.00 01 Total obligations---------	2,146	1,995	2,129
Financing:			
11.00 01 Offsetting collections from: Federal funds--------------	-301	-130	-50
25.00 01 Unobligated balance lapsing-	0	0	0
39.00 01 Budget authority--------	1,845	1,865	2,079
Budget authority:			
40.00 01 Appropriation----------------	1,845	1,865	2,079
Relation of obligations to outlays			
71.00 01 Obligations incurred, net----	1,845	1,865	2,079
72.40 01 Obligated balance, start of year-----------------------	632	654	692
74.40 01 Obligated balance, end of year-----------------------	-654	-692	-747
89.00 01 Outlays---------------------	1,823	1,827	2,024
Outlays:			
90.00 01 Outlays---------------------	1,823	1827	2,024

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
OBJECT CLASSIFICATION
(in thousands of dollars)

Identification code 95-1700-0-1-751	FY 89	FY90	FY 91
Direct obligations:			
Personnel compensation:			
11.1 01 Full-time permanent	930	1,011	1,153
11.3 01 Other than full-time permanent	131	133	103
11.5 01 Other personnel compensation	17	17	20
11.8 01 Special services payments	12	-	-
11.9 01 Total personnel compensation	1,090	1,161	1,276
12.1 01 Personnel benefits	145	149	163
21.0 01 Travel of persons	68	63	64
23.1 01 Rental payments to GSA	206	209	220
23.2 01 Communications, utilities and miscellaneous charges	60	75	75
24.0 01 Printing and reproduction	105	77	80
25.0 01 Other services	86	50	124
26.0 01 Supplies and materials	60	56	52
31.0 01 Equipment	25	25	25
99.0 01 Subtotal, direct obligations	1,845	1,865	2,079
99.0 01 Reimbursable obligations	301	130	50
99.9 01 Total obligations:	2,146	1,995	2,129

STANDARD FORM 300

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

DETAIL OF PERMANENT POSITIONS

95-1700-0-1-751	1989	1990	1991
Executive Level II----------------------	1	1	1
Subtotal----------------------------	1	1	1
ES-6--------------------------------------	1	1	1
ES-5--------------------------------------	1	1	2
ES-4------------------------------------	1	1	-
Subtotal----------------------------	3	3	3
GM-15------------------------------------	2	2	2
GM-14------------------------------------	1	1	1
GS-14------------------------------------	4	4	4
GS-12------------------------------------	3	3	3
GS-9--------------------------------------	-	2	2
GS-8--------------------------------------	3	1	1
GS-7--------------------------------------	3	3	3
GS-6--------------------------------------	-	2	2
GS-5--------------------------------------	2	-	-
Subtotal----------------------------	18	18	18
Total permanent positions	22	22	22
Unfilled positions, end of year	0	0	0
Total permanent employment, end of year	22	22	22

STANDARD FORM 300
Bureau of the Budget
Circular No. A-11, Revised.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PERSONNEL SUMMARY

95-1700-0-1-751	1989	1990	1991
Total number of full-time permanent positions-------------------------	21	21	21
Total compensable workyears: Full-time equivalent employment	24	24	24
Full time equivalent of overtime and holiday hours	0	0	0

STANDARD FORM 300
July 19[illegible], Bureau of the Budget
Circular No. A-11, Revised

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

AVERAGE GRADES AND SALARIES

Identification code 95-1700-0-1-751	19 89 actual	19 90 estimate	19 91 estimate
Average SES salary	$ 77,834	$ 78,567	$ 79,300
Average GS grade	10.62	11.00	11.00
Average GS salary	$ 38,385	$ 39,238	$ 41,698

[NOTE.—Apprentices to Marshall Bregers statement are included in the Committee records.]

Mr. BREGER. I have only a few introductory remarks. I want to leave myself open to answer any questions that the committee might have.

THE CONFERENCE'S ROLE

I am here representing the Administrative Conference of the United States, but, in a broader sense, I am here representing the administrative process—the vehicle by which this Congress and the executive branch administers the laws that are passed by the Congress. I must tell you that this Congress faces major challenges in improving and in dealing with problems of the administrative process.

REDUCING LITIGATION OVERLOAD

There is an overload in litigation, in administrative adjudication. The administrative adjudication system is collapsing. In the Social Security Appeals process, there are over 40,000 appeals. The judges "have only 15 minutes" to deal with each case, and there is not a lot of justice you can give in 15 minutes.

RATIONALIZING THE PROCESS

There is a balkanization of the system. Every time Congress writes a law on a subject, it varies in one way or another some of the administrative procedures. We found in our study of whistleblower protection that there are over one dozen laws that provide whistleblower protection for private sector employees.

There are five different venues where people can go to bring claims of whistleblower protection. Each law has different rules and regulations, different statutes of limitations, different areas of jurisdiction. There is a need for unification and rationalizational procedures. There is a need for training. Indeed, there is positively no training for senior officials in administrative law. There is a need for statistics. It is almost embarrassing to tell you that there are no governmentwide statistics for administrative adjudications in the government; by this I mean the time of cases, the caseload of administrative law judges.

I should tell you that you could not today say how many administrative judges, non-APA administrative judges there is in the government. Everyday new ones arrive. It's almost like immaculate conception. The system is simply on overload.

The Conference has tried, with it small resources, to begin to address these problems. We have been able, I think, to do so, very well on a retail level. When we pick a particular problem, we are able to analyze it, objectively, exhaustively, and come to useful conclusions, but we lack the resources to address them wholesale. There is a need for this Congress and this Administration to focus on the long-term problems of the administrative state, and how to structure the administrative state to ensure fairness to the citizens of this country.

By now, from my various speeches before you, you probably know what the Conference does, but let me give you just a small insight as to some of the ways that Conference initiatives touch the lives of millions of Americans.

CONFERENCE INITIATIVES AFFECT MILLIONS

Last year we examined the procedural mechanisms through which the Medicare Program protects its beneficiaries from unnecessary, poor quality, or inappropriate medical care. We looked as well at the use of medical personnel to help process the more than 1.5 million requests for Disability Insurance Benefits, and Supplemental Security Income submitted annually with the Social Security Administration. This year, we are studying procedural issues connected with the medicaid system, a large and complex problem.

I might add that we are doing that project on a sum of less than $20,000.

At the specific request of this subcommittee, we continue to examine a number of procedural problems associated with implementation of the nation's immigration laws, including the procedures by which the Immigration and Naturalization Service administered the Alien Legalization Program, authorized under the Immigration Reform Control Act of 1986.

The reviewability of visa denials by consular officials is an extraordinary area, I should tell you, that it is one of the few parts of the U.S. Government where there is no accountability, no judicial review. A consular official is emperor in this domain. He can decide to deny a visa for whatever reason or for no reason, and there is no appellate mechanism at all.

We studied the procedures employed for handling asylum claims, and we made a major presentation to the Department of Justice on how they could begin to think about revamping their asylum procedures.

INSURING GOVERNMENTAL INTEGRITY

We also made significant recommendations bearing on fundamental aspects of the governmental process, such as insuring the integrity of governmental decisional processes. Following the 1988 election, we persuaded the new Administration to adopt a first-of-its-kind Code of Conduct for transition workers, an Ethical Code of Conduct.

Using assistance from the General Service Administration, we developed and published a source book of ethics material and an ethics guide which was distributed to key transition workers and new Administration personnel.

We proposed changes in the area of conflict-of-interest requirements for members of the Federal Advisory Committees, and we urged the agencies to make their adjudicatory decisions more readily available to the public.

CONFERENCE THEMES

In order to conserve resources, we are focussing now on five themes.

Procedures employed by banking agencies.

Procedural framework for regulating ethics in government.

Alternate means of dispute resolution. I will say one word about that in a moment.

Procedural issues in science and health care. That includes Medicare and Medicaid, Social Security.

And problems raised in the Administrative Procedure Act.

Our work on alternate dispute resolutions include two bills that we have actively been involved in, one bill to encourage negotiated rule-making. It has passed the Senate, and I think it is in the House. The other bill, on alternate dispute resolution, to encourage it is now moving forward both in the House and the Senate.

1991 REQUEST

Our request this year is for $2,079,000. It is a $214,000 increase over last year, but I should point out that, of that increase, $127,000 goes for salary increases mandated by this Congress; $37,000 goes for automatic increases, such as rent increases and other increases which we automatically pay the federal government. That leaves $50,000 available for research.

FUNDS FOR RESEARCH

This year, in this fiscal year, we had no—zero—money available for self-generated research projects. If and when we were going to engage in research, we had to go out and secure money from other agencies to help us study projects they wanted to study. That is not a good way of doing business in the long run, we had no choice.

This $50,000, which will let us do between four and six projects, will not solve our long-term need to get projects into our pipeline. Mr. Chairman, if you do not sow, it's very simple, you don't reap. But it is a start. It gets us off the anomaly of the agency operating basically on exhaust fumes on past work already started, and let's us begin to once again generate research projects.

Mr. Chairman, I believe that the Administrative Conference does a great deal to assist in securing both fairness and efficiency in the administrative state, and I-urge your acceptance of our appropriations requests. I am pleased to answer any questions.

Mr. ROYBAL. Thank you, Mr. Breger.

THE ADMINISTRATIVE PROCESS

You mentioned in your testimony the administrative law process in various instances. How can you briefly describe to the committee what the administrative law process is? How would you describe it?

Mr. BREGER. I will try to do so, and I will try to do so briefly. You might say, on one foot.

Mr. ROYBAL. All right.

Mr. BREGER. Congress delegates to agencies the power to make rules, rule-making activities. The agencies make those rules in two ways.

There are a small number of agencies that have formal hearing procedures, what we call hearing on a record. These are cumbersome because they have cross examination, and go on for years. If you have 20 different participants, each participant and his lawyer have the right to cross-examine each other participant, and this is a difficult way of generating rules.

The on-the-record procedure only occurs in those agencies such as the FDA—Food and Drug Administration—where it is required, by statute. Most rule-making occurs under what is called notice and comment rule-making, informal rule-making. The government will place a proposed rule in the Federal Register. They will wait a certain period of time to receive comments. They will study and review those comments, they will then issue the rule.

An agency will try, sometimes for better and sometimes for worse, to get public input to make a better rule. Given the press of business in the administrative state, it is often hard to get the best kind of public participation.

We now have an addition to this process, a requirement that rules be reviewed by the OMB, OIRA—Office of Information and Regulatory Analysis—in order to coordinate the rule-making process by the different agencies of the government.

There is another very large part of the administrative process, and that is the adjudication process. There are millions of administrative agency adjudications that go on each year, many, many times the adjudications in federal court. The adjudications done by this administrative judiciary can be very large and complex. The Board of Contract Appeals can deal with a $300 or $400,000,000 cost overrun claim by the federal government against a contractor. Or, alternatively, by a contractor against the federal government.

It can also deal with everyday problems of Black Lung, of Social Security Disability, of Immigration Appeals. Now these adjudications are either done by an administrative law judge, an individual who has certain protections under the Administrative Procedure Act, and there are over 1,000 of those. But there are even more administrative judges, decision makers, who make decisions, who do not have automatic APA protection. And they do very important things.

For example, the members of the Board of Immigration Review are not ALJs, are not administrative law judges. They are just administrative judges.

This area impacts on the average citizen day in and day out. Again, as I suggested at the beginning of my remarks, there is a litigation overload. There has not been sufficient conceptual thought, long-term thought given on how to make that system work, work for the public and work for the government.

IMMIGRATION PROBLEMS

Mr. ROYBAL. In this administrative law process, you stated you looked into or reviewed rules made by various agencies. Is it my understanding that you have done that with regard to Immigration?

Mr. BREGER. Yes, sir.

Mr. ROYBAL. What were your findings with regard to an administrative ruling that was made by immigration with regard to involuntary departure of the children of illegal aliens?

Mr. BREGER. I believe that our study on the IRCA was done before that issue came up, specifically, as a defined problem. We did come out, as you know, for an extension of the legalization period, in terms of the illegal alien issue, and when we dealt with the asylum issue, we obviously dealt with the problems of families and asylum, but we did not deal specifically with the voluntary departure question.

Mr. ROYBAL. But will you?

Mr. **Breger**. We will certainly make every effort to, within the fiscal constraints that I have outlined to you. If we find that we have a problem within those constraints, we will get back to you.

Mr. **Roybal**. I suppose when you look into this, you would find that there is a problem developing very fast. For example, with regard to involuntary departure, they ask the wife or the spouse of a person who has been legalized, to volunteer to leave any time between today and one year from now. That person reveals him or herself as being her-illegally, and signs a paper, "I will depart voluntarily any time within that one year," any time the agency assesses.

In the meantime, they could very well change leadership in the Department of Immigration. Most anything can happen, but that person has already revealed itself, and that person could be deported on the spot, immediately. It seems to be a rather unfair situation, because this will continue the process of separating families. One of the big problems with regard to the immigration bill is that it almost writes into law the separation of families.

It seems to me that we, as a country, should try to get families together, the spouse and the children. I'm not talking about the first cousins or second cousins; we are talking only about immediate families. Under this procedure, two things will happen.

The person will reveal himself and will be subject to deportation immediately. It seems to me, that that should change.

It would be fair, I think, to ask that person to agree to voluntary departure, at their option, or until such time as the system caught up with them, and that could very well happen since a lot of things have happened recently that we never expected. I think that this could happen. So that the family can remain together, I sincerely hope that you can look into that. And then at least give me what your opinion is with regards to that.

Mr. **Breger**. We shall certainly make a preliminary review, and, with your permission, I will get back to you as to our findings.

Mr. **Roybal**. This is a subject that has been under discussion, at least in my district and throughout the State of California, and I suppose through the southwest, because it affects so many individuals. The unfairness of the process is such that it just, in my opinion at least, it continues to advocate the separation of families.

The other thing that is happening—and I don't know that you can do anything about it, but I would like to mention it to you any way. That is, there is a group in San Diego, men and women, that are going out every evening and beating up on anyone who may appear to be Hispanic. They do not beat up on just the illegals, they beat up on Hispanics that were born right there, and they just take on anyone.

In one instance, they shot two individuals. The complaint in the community is that nobody is doing anything about it. I do not know, Mr. Breger, what you can do about it, but I am bringing that to your attention, again, to point out the unfairness of the prejudice that exists in some sections of this country with regard to the person who immigrates to the United States.

We find almost the same situation in my area, for example, with regard to Asians. Remarks are made about Asians taking over, about all kinds of things. We have a long way to go, I think, before we start realizing that this country is made up of immigrants.

The only ones that were here before us were the Indians. And then the Hispanic came in, and settled mostly in New Mexico. Then, from there, they went to California.

Mr. SKEEN. Would the chairman yield?

Mr. ROYBAL. I yield.

Mr. SKEEN. You see what amnesty did for the American Indians.

Mr. ROYBAL. I do not think the American Indians have done very well.

Mr. BREGER. The points you raise are very serious. There is no doubt that we have to often remember that we are a nation of immigrants, and that give us the vitality and the creativity and the innovation, and, in some cases, the work habits that have let us become the great country we are today.

Mr. ROYBAL. Mr. Skeen?

ROLE OF OMB

Mr. SKEEN. Thank you, Mr. Chairman. I think that is a very significant point you made.

Mr. Breger, we have talked for several years in this budget about underfunding your particular agency, and I think it's been chronic, I think it has been going on for, as we have said, at least the years that I have been on this committee.

Let me ask you one question. It sort of bothered me.

Are you getting any more cooperative response from OMB to your budget requests? The reason I am asking the question is this, we have had some difficulty in the past with smaller agencies being ignored in the process, more or less. I know the time is limited, and I know all the other good reasons, but I think every agency's budget is extremely important. We give you a job to do, we ask you to do it, and then we do not provide the funding to get the job done, and, in many cases—you are picking up cases sitting right here in this hearing room today. So I am concerned if we have an important and a viable program to do the studies that you are required to do, that we put the money with it. Have you had better cooperation from the OMB?

Mr. BREGER. I think this year——

Mr. SKEEN. Did you get a hearing?

Mr. BREGER. Yes. I was about to say that. This is the first year in a good number of years, to my knowledge, that we have had an actual hearing. We think that's been very positive. It has allowed us to begin to work together with the OMB.

Mr. SKEEN. Plead your case.

Mr. BREGER. Plead our case, and explain to them more clearly the kinds of things that we do. Of course, we received from OMB the first increase in three years.

Mr. SKEEN. You got an increase, which is, I think, significant. I know you can always use more money, but I think you use it wisely and you do it well in your studies.

THE CONFERENCE RESEARCH AGENDA

Let me ask you a question. From the Senate report last year, the Administrative Conference was directed to adopt a more formal mechanism for setting up its study agenda. I see from the number of pending research projects that is before your Conference, would you give me some idea at how you arrive at these projects, and how you select them?

Mr. **Breger**. Certainly.

Mr. **Skeen**. In a general sense.

Mr. **Breger**. Of course. I should underscore that this year it was very easy to set our research agenda, because, as I pointed out earlier, we had zero money.

Mr. **Skeen**. That's pretty bad. That solves all the problems.

Mr. **Breger**. It is wonderful what the fiscal constraint can do for your calendar. I was able to cancel all of the Research Project Selection Meetings that we would otherwise have. But, more seriously, we have developed a somewhat formal approach for project selection.

We receive suggestions from a wide variety of sources from the agencies, from Congress, from academics and others who are at the margins—the intellectual margin of an area—from my staff, which is very knowledgeable and sensitive to developing issues in administrative law.

We review them internally with the research director, the executive director, and general counsel, and develop a list of proposed projects that we think are worth doing subject to fiscal considerations, and subject to securing the right kind of consultant. Sometimes you can have a good project, but you can't get the right guy to do it.

Then we provide that list, we provide the information about those projects to the Council. Any Council member who wants to discuss and table a particular item can do so, and if the Council, after its review of the document, does not table any item, it is taken as authority for the Chairman, should he choose to do so, to go ahead and make arrangements to conduct that project.

Mr. **Skeen**. So you give it consideration, whether they come from inhouse, agencies, or from whatever source?

Mr. **Breger**. Yes, we do.

Mr. **Skeen**. All right. I thank you for your responses, Mr. Breger.

Mr. **Breger**. Thank you.

Mr. **Skeen**. I am delighted to see that OMB did give you the hearing that you requested, because I think it is a better way to set these budgets, to also judge from their viewpoint, exactly what we are asking to be done. I think it gives you a little better distribution in funding. I think we were starving you there for a while. We have heard the echo and the plea.

Mr. **Breger**. Thank you.

Mr. **Skeen**. You bet. Thank you, Mr. Chairman.

Mr. **Roybal**. Thank you. Mr. Wolf?

Mr. **Wolf**. I have no questions, Mr. Chairman.

Mr. **Roybal**. Mr. Breger, I would like to thank you and your colleagues for all of your testimony. The committee will take your request under consideration.

Mr. Breger. Thank you very much.

[The following questions were submitted to be answered for the record by Congressman Akaka:]

EXCHANGE OF WELCOME

Mr. Akaka. Welcome, Mr. Breger. I'm sure you join me in looking forward to enactment of H.R. 743, the Negotiated Rulemaking Act, during this session of Congress.

Mr. Breger. I appreciate your continued interest in the activities of the Administrative Conference. In particular, I want to thank you for your generous efforts on behalf of H.R. 743, the Negotiated Rulemaking Act. I greatly look forward to its passage.

SUMMARY OF CONFERENCE'S STUDY OF FEDERAL GRIEVANCE PROCEDURES

Mr. Akaka. Can you provide us with a summary of the major issues recommended for consideration by the Congress with regard to the Conference's study of federal grievance procedures?

Mr. Breger. I am pleased to do so, Congressman Akaka, but I believe that some background is necessary to place our recommendations in context. In December 1989, the Administrative Conference of the United States formally adopted a Statement entitled "Procedures for Resolving Federal Personnel Disputes" (54 Fed. Reg. 53498; 1 CFR § 310.15). The Statement was the culmination of a year-long study by the Conference, and was based in part on a report by Professor William V. Luneburg, Professor of Law at the University of Pittsburgh School of Law. The report, "The Federal Personnel Complaint, Appeal, and Grievance Systems: A Structural Overview and Proposed Revisions," was published at 78 Ky. L.J. 1 (1989-90).

The Conference took as a starting the Civil Service Reform Act (CSRA) of 1978, a comprehensive revision of the federal civil service laws. The CSRA created several new institutions and processes for personnel management, including a substantially restructured system for considering complaints, grievances and appeals filed by federal employees in response to personnel actions. Although the CSRA was in part prompted by the confusing, complex, and time-consuming nature of the then-existing procedures, the study showed that the statutory framework created in 1978, with its new forums for adjudicating employee claims, was no less complex and has continued to produce costs, delays, and confusion, accompanied by substantial resource commitments.

This complexity, however, was in large part created by the tension inherent in the simultaneous pursuit of three important legislative goals: adequate protection of employees from discrimination; uniformity in federal personnel management; and solidification and expansion of the place of arbitration as a mechanism to resolve federal employee grievances.

While general principles suggest that procedures for handling federal employee disputes should be as simple and fair as feasible, our principal observation was that the intricate web of processes created by the CSRA was consciously designed by Congress in part because of substantive policy and value judgments that transcend the domain of administrative procedure. The complex framework has been perceived by employees and their representatives as providing necessary protection against possible arbitrary employer action, particularly in cases where discrimination is alleged. As a result, employees may perceive proposed procedural simplification as a potential threat to substantive rights.

For this reason, the Conference concluded that this was one of those situations where the parties involved and the Congress itself might not wish simplicity. In that case, the decision whether to retain or modify the present complex of procedures implicates policy considerations that must be resolved largely through the legislative process. While the experience of the past decade has persuaded us that the time is ripe for fresh consideration by Congress of the problems that gave rise to the CSRA and to the issues that have developed subsequently, we in no way wished to prejudge how the Congress might come out.

The Conference's Statement describes certain important issues that we believe should be addressed as part of a congressional review of the CSRA processes. These include:

(i) whether there should be one rather than the present two opportunities for a full scale trial-type proceeding in cases raising claims of discrimination;

(ii) whether the existing complex structure for administrative adjudication of "mixed" cases (i.e., those in which the employee alleges that unlawful discrimination was the basis for an adverse personnel action) should be retained;

(iii) whether the government should have the right to appeal to the courts in cases involving claims of discriminations; and

(iv) whether employees or their unions should be permitted to seek judicial enforcement of arbitral awards.

In addition, the Conference suggested that the Office of Personnel Management and other agencies consider whether the functioning of existing adjudicatory frameworks—grievance systems of individual agencies, agency complaint processes for discrimination cases, the MSPB process and the various negotiated grievance processes—could and should be improved. Finally, we urged agencies to take steps to improve communications with employees about options for resolution of personnel disputes.

These questions are discussed in some detail in the Conference's Statement, a copy of which I submit for the record. The Conference believes that these issues cannot and should not be examined in isolation, as any review of the procedures of the CSRA should recognize the integrated nature of the institutions and the complex processes created by the Act. Whether or not a comprehensive congressional reexamination takes place, the Conference also suggest that the Office of Personnel Management and other agencies scrutinize and, where appropriate, seek ways to improve the patterns of communication within the agencies and to employees regarding the working of the complaint, grievance and appeal system. The Conference encourages the creative use of alternative means of dispute resolution in resolving employee claims. See Recommendation 86-3, Agencies Use of Alternative Means of Dispute Resolution, 1 CFR § 305.86-3.

RESPONSE BY OPM AND FEDERAL EMPLOYEE ORGANIZATIONS

Mr. **AKAKA**. What kinds of comments have you received in response to your statement from OPM and federal employee organizations?

Mr. **BREGER**. In the course of our study, the Conference's Committee on Governmental Processes held numerous meetings to consider the questions raised and provided opportunities for public participation—both written and oral—in the committee's deliberations.

Mindful of the general principle that procedures for handling federal employee disputes should be as simple and fair as feasible, with a concern for the timely, final resolution of claims, the Committee considered suggested recommendations for elimination of two kinds of apparent redundancies in the statutory scheme: (i) alternative procedural routes through the various administrative agencies with responsibility for enforcing the federal personnel laws; and (ii) repeated opportunities in the same case for a complainant to have a claim reconsidered in a new forum. It also considered recommending that Congress provide for direct judicial enforcement of federal sector grievance arbitration awards.

The Committee's draft recommendations for simplifying the procedures were of concern to representatives of federal employees, who took the position that the system's procedural complexities were intended by Congress to protect the rights of federal employees. This was particularly true in cases when a federal employee contests a personnel action on the grounds of discrimination. In general, these representatives advised against elimination of the two types of redundancies noted, viewing them as important procedural rights of employees.

For example, the NAACP Legal Defense and Educational Fund found particularly disturbing the suggestion that the right of employees to both an administrative hearing and a trial de novo in district court of their EEO claims might be eliminated. They also strongly opposed a suggestion that the government have the right to appeal to the United States Court of Appeals for the Federal Circuit in cases involving claims of discrimination, where the Office of Personnel Management determines that an incorrect interpretation of civil service or discrimination law may have a substantial impact.

The American Federation of Government employees was also opposed to these procedural changes, as well as the suggestion that Congress provide for direct judicial enforcement of federal sector grievance arbitration awards, which the union saw as encouraging agencies to ignore arbitration awards.

The National Treasury Employees Union, while stating that overhaul of the CSRA is long overdue, questioned whether an employee with a mixed case who elects a hearing before the Merit Systems Protection Board (and therefore, under the proposed recommendation, would not be entitled to a trial de novo in the district court) would have adequate protection. The NTEU also noted that direct judicial enforcement of arbitral awards would be acceptable only if the Federal Labor Relations Authority's role in reviewing arbitrations were eliminated and attorney fees were provided to the prevailing party.

The National Federation of Federal Employees similarly submitted comments in opposition to the proposal to limit an employee to a single trial-type hearing in a mixed case and the proposal to allow OPM to seek Federal Circuit review of decisions in discrimination cases that might have a substantial impact. NFEE, however, did express support for the proposal that employees or unions be able to obtain direct judicial enforcement of arbitration awards.

The Office of Personnel Management submitted comments favoring limitation of federal employees to a single trial-type hearing in mixed cases. OPM supported the proposal to allow the Director of OPM to petition the Federal Circuit to review administrative or arbitral decisions in discrimination cases that might have a substantial impact on civil service law, but opposed any suggestion to limit that access to the court's discretion.

OPM also supported the proposal to provide for Federal Circuit enforcement of arbitral awards. In OPM's view, the agency should be allowed to raise any legal issues previously raised before the FLRA. The proposal for direct judicial enforcement was vigorously opposed by the FLRA for a variety of reasons.

If you wish, we will be pleased to make available to you copies of the letters in our files commenting on these matters. The foregoing comments helped to confirm the view of the Administrative Conference's Committee on Governmental Processes that the issues raised by our study could not be resolved merely on the basis of principles of good procedure. For this reason, the Conference determined that specific recommendations on these issues would be inappropriate. However, believing that a comprehensive review by Congress would be useful, the Conference set forth in a Statement a number of the procedural issues that should be considered in such a review.

Eleven Priority Research Items

Mr. Akaka. With respect to new research projects anticipated in fiscal year 1991, have you prioritized the topics listed?

Mr. Breger. I recently identified eleven research projects which I believe should be accorded priority in the coming year. Under Conference procedures, I submit those recommendations to the Council for approval. At its February 27, 1990, meeting, the Council approved this selection, which I include for the record. It is important to understand that even with a full FY91 appropriation funds are available for four to six projects only.

Conference Process for Selection of Research Topics

Mr. Akaka. How does the Conference select research projects from the list?

Mr. Breger. The decision to begin a study of one of the topics on our possible project list (and sometimes of a topic not on the list) is controlled by the following factors: the relative importance of the topic to on-going Conference initiatives or areas of interest; the availability of a qualified research consultant; the likelihood that a recommendation, if adopted, can be implemented (the timing of projects at times reflects perceived windows of opportunity for change); and the availability of funding.

To make more effective use of our limited resources in recent years, I have established "themes" or areas of emphasis in which to concentrate our limited resources. Alternative dispute resolution, immigration procedures, financial services regulation, and federal health care procedures are examples of such areas of interest. By so doing, we encourage crossfertilization among consultants and heighten our influence in the chosen area. A research topic related to an ongoing subject of special emphasis naturally is given a somewhat higher priority.

At the same time, the Conference has a special responsibility to oversee and study operation of Administrative Procedure Act procedures, namely rulemaking, adjudication, judicial review of agency action, and public information. The list of recent Conference recommendations includes several in this category: Recommendation 88-9, *Presidential Review of Agency Rulemaking*; Recommendation 89-5, *Achieving Judicial Acceptance of Agency Statutory Interpretation*; and Recommendation 89-8, *Agency Indexing of Adjudicatory Decisions*. Thus, significant developments in one of these traditional areas of Conference expertise are also given a priority.

Topics also are selected for study from time to time because the Conference is asked to conduct a study by another government body. For example, in recent years we have begun studies requested by agencies, Congressional committees, and the Domestic Policy Council. Our recent study of the Federal Aviation Administration's demonstration civil penalty program is an example. The FAA requested the study and Congress extended the statutory authorization for the program so the study could be completed.

AGENCIES INITIATION OF PROJECTS WITH THE CONFERENCE

Mr. **AKAKA**. How does an agency go about initiating a project with the Conference under the Economy in Government Act?

Mr. **BREGER**. Research projects that we conduct with inter-agency transfers of funds originate in several ways. Sometimes the agency contacts the Conference directly and asks that we undertake a study for them. Other projects originate in the informal contacts that we continuously have with agencies, during which assistance of the Conference is offered. In still other situations, the Conference develops a research project that will benefit several agencies—typically one that cuts across agency lines—and then seeks agency financial support for the project.

In all cases, however, the research topic must be compatible with the Conference's mission of improving agency procedure, and the funding agency or agencies must agree to submit the resulting research report to the Conference's deliberative processes, including public availability of the report. The agency must understand that it cannot control the integrity of the Conference process.

Actual transfer of funds is effected through the execution of a simple inter-agency agreement.

[The justifications follow:]

ADMINISTRATIVE CONFERENCE
OF THE UNITED STATES

Budget Justification

FY-91 Request

Prepared March 2, 1990

THE ADMINISTRATIVE CONFERENCE ACT

OBJECTIVES: (5 U.S.C. § 574)

1. Study the efficiency, adequacy, and fairness of the administrative procedures used by agencies in carrying out programs and make recommendations to agencies . . . and to the President, the Congress, or the Judicial Conference of the United States.

2. Arrange for interchange among agencies of information useful in improving administrative procedures.

3. Collect information and statistics from agencies and publish such reports as it considers useful for evaluating and improving administrative procedures.

ADMINISTRATIVE CONFERENCE ORGANIZATION

CHAIRMAN:

Appointed by the President, confirmed by the Senate for a five-year term. Only member compensated. Paid at Executive Level II. Directs a full-time staff. Has statutory authority to organize and direct studies and to inquire into matters considered important for Conference consideration.

COUNCIL:

Consists of the Chairman and ten other members appointed by the President for three-year terms. Functions similar to a corporate board of directors. Meets on call to give basic policy guidance to Conference work, calls plenary sessions, and receives and considers reports and recommendations before they are considered by the assembly. One member is assigned to serve on each Conference committee. Travel is reimbursed.

ASSEMBLY:

The membership consists of 75 to 101 members, including the Chairman, 10 council members, government members designated by the head of federal agencies and public members appointed by the Chairman, subject to Council approval, for two-year terms.

BUDGET AND AUTHORIZATION HISTORY

	Authorization	Appropriation
FY-76	$850,000	785,000
FY-77	900,000	880,000
FY-79	1,700,000	1,062,000
FY-80	2,000,000	1,119,000
FY-81 - FY-86	2,300,000	1,167,000.- 1,369,000
FY-87	1,600,000	1,483,000
FY-88 - FY-90	2,000,000	1,865,000
FY-91 Request		2,079,000

FY-89 SIGNIFICANT ACCOMPLISHMENTS

BUDGET ACCOMPLISHMENTS:

INTERAGENCY TRANSFERS: During the year, the Conference was the recipient of $301,000 in transfers under the Economy in Government Act to conduct specific studies in administrative procedure at the request of other agencies. In addition some funds were designated to support Conference initiatives in alternative dispute resolution. Without these transfers, Conference research program and some clearinghouse activities could not have been funded.

TRAVEL COST REDUCTIONS: Travel expenditures were held below FY-88 costs by rigorously enforcing travel regulations, encouraging early reservations through a GSA contractor travel service, and by combining meetings and activities to reduce necessary trips. Further reductions are not likely if work is to be efficiently completed by committees and if members continue to be secured "outside the beltway" from north to Massachusetts, south to Mississippi, and west to Arizona, Utah and California.

PUBLICATION COST REDUCTIONS: While Federal Register charges, postage, and paper charges continued to increase, printing costs were reduced by using desktop publishing on microcomputers thus eliminating makeup and typography charges at GPO. This required an additional person to do layout and composition at the Conference but was accomplished by not replacing one clerk who resigned and by terminating a personal services contract for public affairs activities.

FY-89 SIGNIFICANT ACCOMPLISHMENTS (continued)

BUDGET ACCOMPLISHMENTS:

ELIMINATION OF PERSONAL SERVICES CONTRACTS: Personal services contracts for research assistance, public affairs, and mailing services were eliminated and the tasks assumed by Conference personnel.

PROGRAM ACCOMPLISHMENTS:

ADMINISTRATION OF GOVERNMENT CONFLICT OF INTEREST: President-Elect George Bush adopted the Conference's recommendations concerning the standards of conduct for transition team members and distributed the Conference's ethics sourcebooks to team members. President Reagan issued memorandum to all government agencies precluding contacts with transition team members who do not sign standard of conduct agreement. The Presidential Commission on Ethics endorsed the Conference's recommendations concerning financial disclosure requirements for government employees. The President's Ethics bill adopted the Conference Recommendation on deferred taxation of gains realized upon divestiture of property to avoid conflicts of interest. P.L. 101-194 included the provision.

BANK AGENCY PROCEDURES: The Conference's Special Committee on Financial Services and its consultant were called upon by Congressional staff to review and comment on numerous pieces of banking legislation. P.L. 101-73 incorporated recommendations on uniform rules of practice, a pool of ALJs, and use of ADR in receivership claims. The Supreme Court favorably cited the Conference report in the *Coit* case.

FY-89 SIGNIFICANT ACCOMPLISHMENTS (continued)

PROGRAM ACCOMPLISHMENTS:

OMB REVIEW OF RULEMAKING: The Conference adopted a recommendation concerning OMB review of rulemaking which OIRA has endorsed and is seeking to implement.

ASYLUM PROCEDURES: The Department of Justice favorably received the Conference's Recommendations on reforming asylum procedures.

ALTERNATIVE DISPUTE RESOLUTION: The Conference has put in place a Roster of ADR Neutrals from which agencies can obtain names of persons willing to serve as neutrals in ADR proceedings. Roundtables on ADR and Negotiated Rulemaking have been held at which agency personnel exchanged practical advice on successes and problems with ADR. Two bills are presently pending in Congress based in large measure on Conference ADR recommendations. One has already passed the Senate.

FOIA AND THE RELEASE OF COMPUTER DATA: The Conference adopted a significant recommendation directed at resolving the way in which computer data should be treated under the Freedom of Information Act.

WHISTLEBLOWER LEGISLATION: Congressional bills which contain whistleblower provisions continue to adhere to Conference recommendations concerning the procedures which should govern.

FY-89 SIGNIFICANT SETBACKS

BUDGET SETBACKS:

APPROPRIATIONS: The Conference appropriation for a third year was not increased. Consequently, the Conference's research program is being dictated primarily by agencies willing to transfer funds under the Economy in Government Act. It has been impossible to plan larger research projects affecting multiple agencies because the fiscal resources available are seldom known before the end of a single fiscal year.

PROGRAM SETBACKS:

DISTINGUISHED FELLOW: For two years the Conference has been fortunate to have a distinguished visiting fellow on loan from the Justice Department at no cost to the Conference. He departed December 31, 1989 and the Conference has no funds to retain a replacement to continue the services he was performing. Efforts are being made to obtain another non-reimbursable detail but no success has been realized to date.

FY-89 SIGNIFICANT SETBACKS (continued)

PROGRAM SETBACKS:

ADR LEGISLATION - OLC OPPOSITION: Despite support from agencies, the federal judiciary, the ABA, and a myriad of others concerned about the cost of lengthy litigation, the Office of Legal Counsel (OLC) in the Department of Justice has opposed certain aspects of proposed legislation encouraging broader use of ADR in the federal government. When asked on what issues he intended to take a leadership role, Chief Justice Rehnquist testified on July 30, 1986 during his confirmation hearings, "[I] think one of the most critical things in American society today is the cost of litigation, and the implementation in some places, but not everywhere, of alternative means for dispute resolution to avoid the tremendous delays that people encounter in getting a dispute settled." Efforts to reach a compromise with OLC are in progress.

FUTURE GOALS

REAUTHORIZATION:

RETURN TO HISTORICAL FUNDING LEVELS: The Conference seeks reauthorization for FY-91 and succeeding years. To maintain current programs it will be necessary to obtain an increase of about 7.5 per cent annually to recover sufficient funds over four years to maintain research programs at current levels. To return to the percentage of the budget historically allocated (see graphs) it will be necessary to add about $50,000 per year over four years to the budget in addition to inflation. In order to maintain key programs within the Conference's statutory mandate this additional authorization and associated funding is necessary.

RESUME STATISTICS GATHERING FUNCTION: In the late 1970s the Conference gathered and published statistical reports on administrative hearings under the Uniform Caseload Accounting System. This was discontinued for budgetary reasons. A recent study of Judicial Remands by Professors Donald Elliott and Peter Schuck of Yale Law School strongly urges the gathering of this data because of its substantial value to those attempting to study results and reform. The government lacked definitive statistical data to analyze positions taken on the ALJ Corps bill, the Fair Housing Act, Social Security benefit claims, Veterans Department claims, or myriad legislation debating the pros and cons of new independent commissions. This would cost between $100,000 and $150,000 annually to resume.

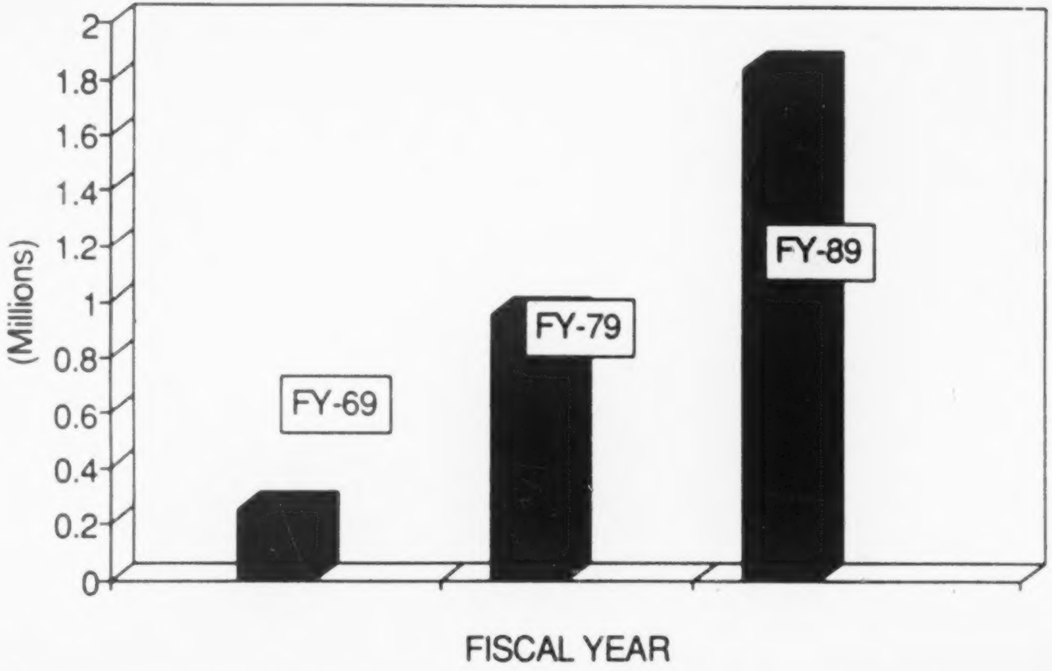
FUTURE GOALS (continued)

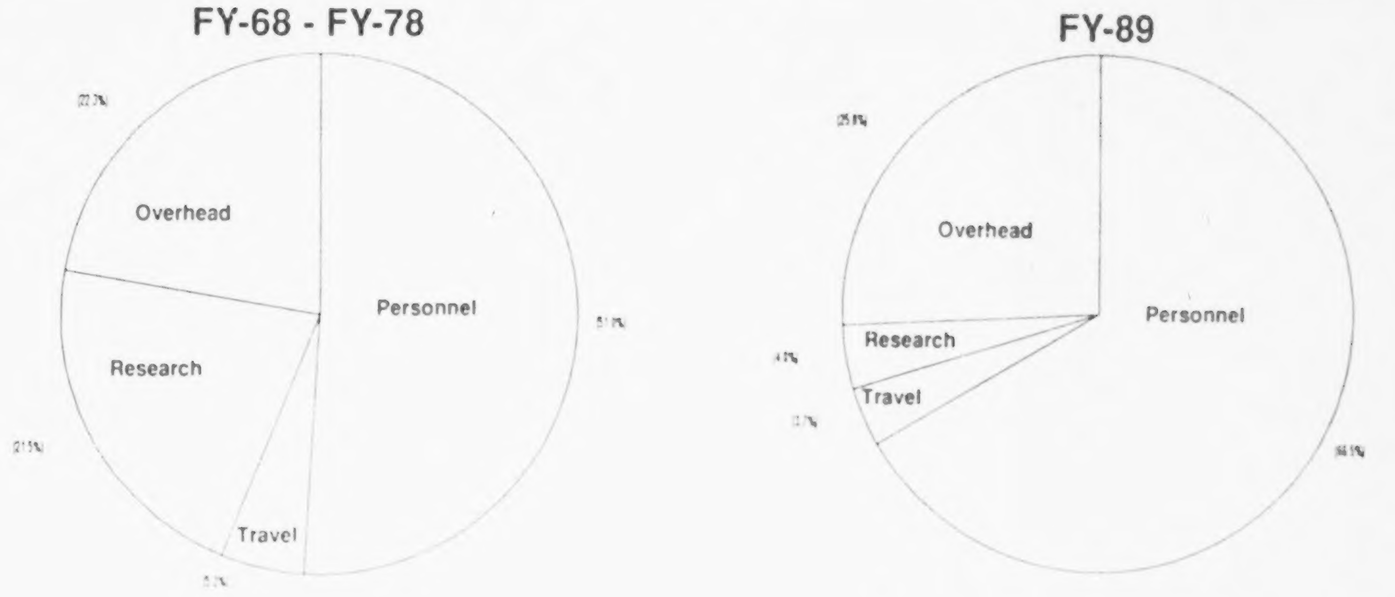
REGULARIZE CONFERENCE PUBLICATIONS: As a clearinghouse, the Conference should regularize its publications such as *A Guide to Federal Agency Rulemaking*, *The Sourcebook on Alternative Dispute Resolution*, and *The Sourcebook on Administrative Procedure*. These publications currently cost about $50,000 each to prepare, print, and distribute but save the government thousands of hours of repetitive research. In addition the Conference has a study series of topics which have current interest in the agencies which should be added to on a regular basis.

IMPLEMENTATION AND TRAINING: The Conference now provides some training to government employees on Conference Recommendations. This is an effective implementation methodology which needs to be expanded so that it reaches many more government employees charged with responsibilities in areas of Conference initiatives. Conference personnel are certified to provide continuing legal education credits for its programs. To adequately staff a regularized training effort would require additional staff and associated funding. In contrast to the Federal Judicial Center which trains new judges in basic procedure, there is **NO** training for new Commissioners or new federal appointees in administrative law and procedure. The consequences of failures resulting from lack of training can be quite costly.

BUDGET GROWTH OVER 20 YEARS

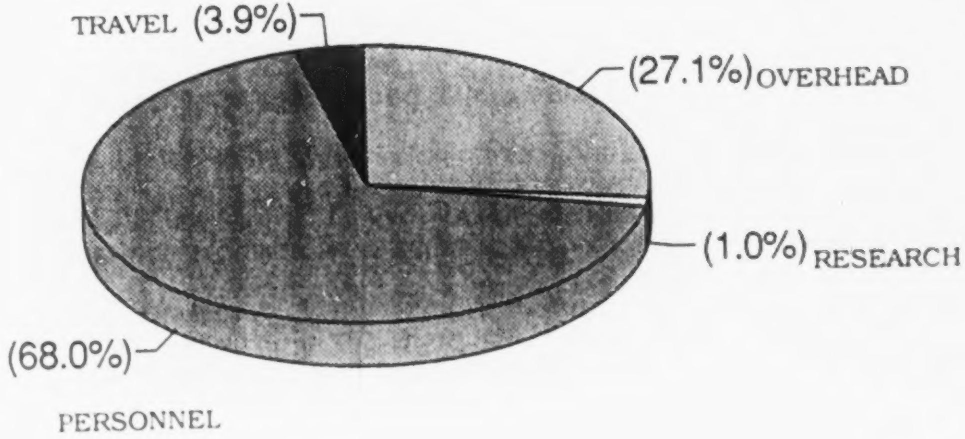
Administrative Conference of U.S.





OVERVIEW OF ACTIVITIES

Source - Report by the U.S. General Accounting Office
GGD-90-13, February 4, 1980 and ACUS FY-91 Budget Request



OVERVIEW OF ACTIVITIES - FY-90

FY-91 BUDGET REQUEST

REQUEST: $2,079,000

BASIS: Represents amount of current Authorization plus a slight increase to cover increased administrative costs primarily consisting of salary increases recently enacted. Compared with the FY-90 budget of $1,865,000, it provides for $104,000 in increased salary costs (half of the salary increases are being absorbed by reductions in other budget line items, however, step increases and cost of living increases are included), $20,000 in increased rent projections, $5,000 in increased phone billings, $5,000 in increased supplies and reproduction costs, and $80,000 for initiating new research which would fund four or five small projects.

NOT INCLUDED: The budget request is solely for "same services". It does not include any of the items discussed under "Future Goals".

WORKLOAD ACCOMPLISHMENTS

FTE: Authorized 25. Onboard 24

WORKLOAD TRACKING: The Conference maintains an assignment tracking system and a master calendar. In the past year, required reports under the Equal Access to Justice Act have been brought up to date after falling several years behind. Assignments are made in full consideration of schedules and timetables and due dates are enforced by supervisors. Calendar dates are set six to twenty-four months in advance and schedules to meet the dates are maintained. Performance elements and standards for employees are adjusted annually to reflect management goals and timetables.

STATUS OF GAO RECOMMENDATIONS

GAO AUDIT - FEBRUARY 4, 1980 (GGD-80-13)

RECOMMENDATIONS: 1. Conduct long-range planning of future projects including Council or committee review; 2. Develop better documentation to provide strengthened accountability for project costs and schedules; 3. Request OMB to serve as a focal point for determining executive department implementation; 4. Include project evaluations in planning for future projects.

STATUS: All recommendations have been implemented. Two significant caveats are necessary. 1. Long-range planning for future projects is significantly hampered by budget limitations. 2. OMB has yet to agree to serve as a focal point for determining executive department implementation. A recent letter to OIRA seeking assistance on some recent recommendations is still pending. The Council has recently adopted a procedure to review proposed future projects and such proposals include project evaluations.

CONGRESSIONAL INTEREST

SPECIFIC MEMBERS: During the past two years, the Conference has been asked to assist approximately 20 separate Congressional committees or subcommittees. It was formally requested to present testimony by ten committees or subcommittees on 17 occasions. It supplied information to the following members of Congress following specific inquiry from the members or their staffs:

1. Senators: Max Baucus, Alfonse M. D'Amato, Dennis DeConcini, Robert J. Dole, Pete Domenici, Charles E. Grassley, Daniel K. Inouye, Edward M. Kennedy, Carl M. Levin, Howard Metzenbaum and Alan Simpson.

2. Congressmen: Jack Brooks, Albert Bustamante, Benjamin Cardin, William Ford, Barney Frank, Dan Glickman, Steny Hoyer, Donald Lukens, Edward R. Roybal, Charles Schumer, and Joe Skeen.

3. Numerous requests from Congress for copies of reports or recommendations which are not logged.

ALTERNATIVE DISPUTE RESOLUTION ISSUES

OLC OBJECTIONS (S. 971): OLC objects to ADR if the government is bound by the arbitrator's decision with no opportunity for higher review. This is not an objection to ADR in general and is limited in scope. The Conference has been sensitive to this concern where policy questions are involved but does not share the concern on disputes where the government interest in efficient disposition and finality outweigh any policy issues raised by the dispute, *e.g.* garden variety contract disputes.

NEGOTIATED RULEMAKING ACT (S. 303): Negotiated Rulemaking does not weaken executive branch rulemaking authority but provides a means of efficient rule development where costly litigation risks are present if some binding mechanism is not available to the decision-maker. The agency always retains the right to accept or reject a negotiated rule, as does OMB.

I. SUMMARY FIGURES

Dollar Amounts

1989 appropriation	$1,845,000
1990 appropriation	$1,865,000
1991 request	$2,079,000

Appropriation Language

For necessary expenses of the Administrative Conference of the United States, established by the Administrative Conference Act, as amended (5 U.S.C. 571 et seq.) and not to exceed $1,000 for official reception and representation expenses; [$1,865,000] $2,079,000.

Estimates of Programmatic Application of Funds
(in thousands of dollars)

	Actual 1989	Est'd 1990	Est'd 1991
General Administration	409	415	453
Personnel Compensation and Benefits	1,235	1,310	1,439
Formal Recommendations (Research; reports)	96	63	108
Implementation and Advisory (Agency assistance)	72	77	43
Clearinghouse (Information interchange)	33	0	36
Budget Authority	1,845	1,865	2,079
Outlays	1,823	1,827	2,024
Reimbursable Programs			
Obligation Authority	266	130	50
Outlays	184	120	46
Totals: Direct and Reimbursable Programs			
Obligation Authority	2,111	1,995	2,129
Outlays	2,029	1,985	2,070

Personnel Resources--FTEs

1989 Actual	1990 Estimate	1991 Estimate
24	24	24

II. DESCRIPTION OF THE AGENCY

A. STATUTORY MISSION

The Administrative Conference of the United States is a permanent agency consisting of 101 members who are the government's top legal officers, leading academics in the field of administrative law, and experts from private life who are knowledgeable about governmental processes. The agency advises the President, the Congress and federal agencies on ways to improve the fairness and efficiency of federal agencies' administrative procedures. These procedures include those used to conduct adjudications, rulemakings and other agency activities. The Conference directs studies of the structure of government agencies and their administrative processes. In addition, the Conference advises the Judicial Conference of the United States on matters of administrative law relating to judicial review of agency decisions. The Conference also works with agencies, informally, to improve their administrative procedures. It fields hundreds of advisory questions and devises model rules such as those for agency implementation of the Equal Access to Justice Act. It collects and synthesizes materials like the *Federal Administrative Procedure Sourcebook*. *A Guide to Federal Agency Rulemaking* (currently being revised and updated), the *Sourcebook on Federal Agency Use of Alternative Dispute Resolution* (1987), the *Sourcebook on Negotiated Rulemaking* (1990), and other administrative law reference materials. Working groups on key topics of current concern in administrative law are regularly conducted. This saves agencies from expending resources independently to accomplish similar tasks and provides a mechanism for ensuring consistency from agency to agency in procedural matters affecting the public.

The Conference's advice is given principally in the form of formal Recommendations that are debated and adopted by vote of its 101 members. These Recommendations, once adopted, are published in the Federal Register, and are transmitted by the Chairman of the Conference to the Congress and to the relevant agencies. For example in FY-89 the Conference continued its initiatives for encouraging the use of alternative dispute resolution (ADR) as a means for reducing litigation costs throughout government. A rule establishing a roster of neutrals has been adopted by the Conference. Qualified applicants are placed in a database of neutrals for agency use. Recommendations were adopted concerning the use of ADR for resolving contract disputes, and eight agencies supported the Conference with funds so that a series of roundtable discussions among agencies with similar dispute resolution problems could be held with expert consultants and agency personnel knowledgeable in the area. The Conference has actively sought to support Congressional initiatives which would implement its Recommendations concerning negotiated rulemaking. There are bills currently pending in both the House and the Senate which would encourage the use of both ADR generally and, more specifically, negotiated rulemaking by agencies and would clarify how the provisions of the Federal Advisory Committee Act should be applied. In addition, the Conference is publishing a major sourcebook reference for agencies with the financial assistance of a number of federal agencies.

The Conference also provided support to the Presidential transition during FY-89 concerning ethics in government with the financial support of the General Services Administration (GSA). The Conference Recommendations which urged standards of conduct for Presidential transition workers were implemented in large part for President Bush's transition team. Using the financial assistance provided by GSA the Conference developed and published a Sourcebook of ethics materials and an associated ethics guide which were distributed to key transition workers.

A number of difficult issues affecting federal agencies are currently being addressed by the Conference. Substantial financial support was provided by the Department of Health and Human Services (HHS) to study the Social Security disability adjudication process. A consolidated set of Conference Recommendations have been prepared and sent to the Social

Security Administrator. The Conference's Committee on Adjudication will review the consultant's report and determine whether additional Recommendations are needed to improve the process. Two additional studies are being funded to look at the Medicaid program and the designation of "representative payees" for social security beneficiaries. A draft report on the latter program is currently being reviewed by Conference staff. The Committee on Administration is reviewing the use of medically-trained deciders in disability cases. The Social Security Administration, Department of Veterans Affairs, and the Department of Labor all have such cases but have differing procedures for medical evidence. At the request of the Domestic Policy Council and the Office of Personnel Management (OPM), the Conference has recently completed a review of the complex and redundant systems for federal employee grievance and personnel appeals process. The Committee on Regulation is examining the "right-to-know" statutes and rules used by the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and The Food and Drug Administration (FDA) as part of its review of risk communication as a regulatory approach.

B. MEMBERS AND STAFF

The Administrative Conference of the United States is headed by a Chairman who is an advice-and-consent Level II appointee with a term of five years. The current Chairman, Marshall J. Breger, who was previously a Special Assistant to the President in the Office of Public Liaison, was appointed on October 17, 1985. The Chairman acts as the chief of the membership, presiding over its meetings. He also heads the Office of the Chairman which consists of 21 full-time permanent, four part-time permanent, one full-time temporary, and two part-time temporary positions.

The Administrative Conference's overall direction is reviewed by a ten-member Presidentially appointed Council, half of whose members have traditionally been from the Executive branch, and the other half from outside the government. Current members of the Council are Phillip D. Brady, General Counsel of the Department of Transportation, Richard C. Breeden, Chairman of the Securities and Exchange Commission, Harold R. DeMoss, Jr., Bracewell & Patterson, Houston, Texas, Professor Emeritus Walter Gellhorn of Columbia University School of Law, Trudi M. Morrison, President of The Morrimount Corporation, Constance B. Newman, Director of the Office of Personnel Management, Robert S. Ross, Executive Assistant to the Attorney General, R. Carter Sanders, Jr., Sanders & Associates, and Edward L. Weidenfeld, Esquire, Washington, D.C.

The membership of the Administrative Conference is divided into two categories: Executive branch and "public" or non-governmental. There are fifty government members, typically general counsels or commissioners of the departments and agencies. These members are either the head of the department or agency or an individual designated by the head. Typically, the member designated is the General Counsel or a legally trained Commissioner. Members do not have to be lawyers, however, and some are not. The forty public members are appointed by the Chairman, with the approval of the Council, for terms of two years. The listing of both government and public members, current as of December 1, 1989, is attached to this budget submission (Tab A).

Because of the prestige of serving on the Administrative Conference, the government receives, free of charge (except for travel expenses for out-of-town members) the services of both its government and public participants--individuals with an impressive array of accomplishments and experiences who donate hundreds of hours of service.

C. FORMAL RECOMMENDATIONS

Formal Recommendations of the Administrative Conference are the result of a relatively unique deliberative process that begins with the decision by the Chairman with approval by the Council to pursue a particular research topic. The Chairman's decision is frequently based on informal expressions of interest in a problem by a member of the Conference, a member of Congress, an Executive branch official or an interested citizen. The topics are usually narrow and precise--as can be seen from the list of past Recommendations. [1 C.F.R. Part 305 *see* Tab B.]

When a topic has been defined, the staff of the Office of the Chairman finds a consultant--typically a law professor who already has specialized knowledge about the particular subject. The consultant will interview agency officials, review the literature, and write a 100 to 200 page report on the problem. The consultant works closely with the Conference Research Director, one or more staff attorneys, the Chairman, and the members of the appropriate Conference standing or special committee throughout this process.

The draft report is reviewed by one of the Conference's committees (all members serve on one of these committees) and, if the committee believes it is warranted, it develops a proposed Recommendation assisted by public participation and comment. The Council reviews Recommendations proposed by committees and, if it believes the proposals have received sufficient attention, places them on the agenda of the next general meeting of the whole Conference -- or Plenary Session.

At the Plenary Session, proposed Recommendations submitted by the Council are thoroughly debated by the members. Often Recommendations are amended and occasionally they are referred back to committee or voted down. If a Recommendation is adopted, it is published in the Federal Register and is sent to the agencies or to the Congress, as appropriate. The Recommendations of the Conference are codified in the Code of Federal Regulations. [1 C.F.R. Part 305]

This extensive deliberation and review ensures that the resulting Recommendation reflects the maximum possible consensus among knowledgeable persons of varied perspectives. The Recommendations resulting from this consensus process provide departments and agencies with a procedural approach to complex and controversial problems which is much more likely to succeed by gaining public acceptance and withstanding judicial challenge than single-source proposals.

D. IMPLEMENTATION AND ADVISORY ACTIVITIES

Implementing Conference Recommendations is an important part of the activities of the staff of the Office of the Chairman. The Office maintains a separate file on each past Recommendation. Information received from all agencies and other sources concerned with implementing a particular Recommendation is documented in that file. Because the Conference has no regulatory authority to implement its Recommendations, it tries to stay abreast of current developments in one or more departments or agencies, or Congressional committees, which may relate to a problem addressed by a Conference Recommendation. The relevant body will be informed of the Conference Recommendation and Conference assistance will be offered. This includes the preparation of testimony, the submission of written comments on agency rule proposals, or the development of training for applicable audiences interested in implementation. The Conference presented testimony before six separate House or Senate subcommittees during 1989. Among other things, the Conference offered views to the House Subcommittee on Labor-Management Relations on legislation for the uniform handling and resolution of private sector whistleblower complaints (H.R. 3368); to the House Subcommittee on Administrative Law and Governmental Relations and the Senate Governmental Affairs Committee, respectively, on bills to enhance the use of negotiated rulemaking (H.R. 743) and alternative methods of dispute resolution (S. 971), and to the Subcommittee on Human Resources of the House Post Office and Civil Service Committee on the effects of government ethics restrictions on the recruitment and retention of federal employees. Richard Berg, the Conference's consultant on the application of conflict of interest laws to federal advisory committees, offered his views to the Senate Governmental Affairs Committee at hearings on a bill to amend the Federal Advisory Committee Act (S. 444). The Office of the Chairman provided written comments on S. 444.

The Office of the Chairman also receives requests from departments, agencies, members of Congress and Congressional committees for its views on procedural matters or administrative matters in areas in which the Conference has not adopted a formal Recommendation. In such situations, the Chairman or staff of the Office of the Chairman will provide information based on their own expertise and/or on research reports contained in the Conference library. In some cases studies may be initiated to address the area if it appears to have broad application throughout the government or if the requesting body wishes to have Conference assistance under the Economy in Government Act.

The Chairman on occasion receives official requests from agencies, the President's Domestic Policy Council or members of Congress to develop a Recommendation in a particular area. Recent examples discussed above were the request from the Domestic Policy Council and the request from the Social Security Administration. There were six federal agencies that transferred funds to the Conference in FY-89 in order to obtain Conference expertise and assistance for specific projects involving administrative processes.

E. CLEARINGHOUSE ACTIVITIES

The Office of the Chairman is authorized by the Administrative Conference Act to "arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure". (5 U.S.C. §574(2)) One example is the Council of Independent Regulatory Agencies, created in April of 1982 at a meeting with the President. This informal group of agency heads is convened by the Chairman of the Conference to discuss matters of interest to over a dozen chairmen of the principal regulatory agencies who are its members. The Conference provides a means by which communication can be shared between the White House and the agencies while respecting their independence. The Conference offers an annual seminar on current administrative law and process issues for all members of independent boards or commissions.

The Conference organizes and conducts colloquia to help carry out its mandate "to provide suitable arrangements through which federal agencies, assisted by outside experts, may cooperatively study mutual problems...." (5 U.S.C. §571). In 1989 the Conference was able to conduct several of these popular and successful colloquia and symposiums. Colloquia and seminars held during FY-89 included a discussion of executive prerogatives after *Morrison v. Olson* featuring Michael Davidson, Senate Legal Counsel, Harold Bruff, a noted professor of Constitutional Law, and Douglas Kmiec, Assistant Attorney General. In December, C. Boyden Gray appeared with Rep. Barney Frank to discuss Ethics in Government. Emphasizing its dispute resolution initiatives, the Conference held a seminar at the State Department in February on the disputes resolution procedures under U.S. - Canada Free Trade Agreement, which over 300 experts attended to hear 35 panelists during an all-day event. In May, the Conference arranged for a debate on reform of the savings and loan industry which featured Richard Breeden, from the White House and Danny Wall, Chairman of the Federal Home Loan Bank Board. The drug approval process was explored at a July colloquy featuring Frank Young, Commissioner of the Food and Drug Administration, William B. Schultz of Public Citizen Litigation Group and Professor of Food and Drug Law at Georgetown, and James O'Reilly, Chairman of the American Bar Association (ABA) Committee on Food, Drug and Cosmetic Law. In May, the Conference co-sponsored with GSA a conference on federal advisory committee management.

The Office of the Chairman also hosts various individuals and groups from foreign governments who are interested in questions of governmental process and in the work of the Conference. During the past twelve months, these visitors have come from Israel, China, Australia, the Soviet Union, Canada, and Great Britain.

Finally, the Office of the Chairman maintains a library that not only includes Conference publications and the archived records of past Conference research projects but also an excellent collection of materials on administrative law subjects. The collection is frequently used by personnel from other federal agencies who need information on the Administrative Procedure Act, the Freedom of Information Act, the Privacy Act, or other legal material relating to administrative law. The library is a Federal Depository Library and is open to the public.

III. ACTIVITIES AND REQUEST BY FUNCTION

1991 Request

The Administrative Conference requests $2,079,000 for its Fiscal Year 1991 budget. While this request represents an $214,000 increase over the FY-1990 Conference budget, it follows three years in which the Conference has had no increase. The Conference was historically authorized a much larger staff but had voluntarily reduced the size of its staff during the early 1980s. In the past few years, however, the Conference workload has more than doubled. The number of requests from Congress, the Administration, and the agencies for Conference assistance has been steadily increasing. There is a growing backlog of issues on which research and committee consideration is required. Failure to address these issues which affect numerous programs and agencies throughout the federal government will have severe cost implications in later years due to lost efficiency, significant increases in litigation, and a hodgepodge of procedural entanglements.

The Conference was authorized by OMB in FY-88 to increase its FTE to 25. Budget constraints, however, have made it impossible to absorb the salary costs for 25 FTE and the Conference has found it necessary to hold its FTE at 24. An additional $75,000 would be necessary in addition to the FY-91 request to reach 25 FTE. For FY-91, projected increases in General Administration and Personnel Compensation and Benefits for 24 FTE will be $267,000 above the costs for the same services in FY-88. This amount includes grade increases and promotions and recent pay increases. Increased costs in General Administration for facility rent, GSA services for personnel and health unit, phone service contracts and maintenance, copy machine costs, and equipment maintenance are projected to be at least $45,000. The request is sufficient to provide money to initiate approximately six new projects during the year. Historically, the research budget has been approximately 20 per cent of the total Conference appropriation but has declined to less than two per cent in recent years. As a consequence, the number of administrative and procedural issues which the Conference has been asked to address has grown out of proportion to the Conference's ability to effectively respond. If the Conference is to fulfill its mandate, it is vital that a quality research program be maintained.

While more funds are needed to provide an implementation and advisory program for the agencies and to insure that the Conference's Clearinghouse activities are properly carried out, these activities are budgeted at the FY-88 level.

A. General Administration

The Conference is located at 2120 L St. N.W. in a suite of offices occupying a portion of the fifth floor. GSA charged the Conference $206,000 rent for its facilities in FY-89 and the cost will increase to $220,000 in FY-91. Interagency agreements with GSA and HHS to handle its payroll, personnel administration, some procurement, health clinic and other small agency matters where it is not prudent to maintain separate Conference capability are estimated at $47,000. Communications, utilities, postage, and equipment leases are expected to increase from $67,000 to $69,000 over the two fiscal years. The costs of library acquisitions, computerized legal research, and office supplies are projected to increase but the requested budget is for $2,000 less from FY-88 to FY-90 to reflect a smaller number of Recommendations funded out of the Conference appropriation. The increased supply costs associated with research funded through interagency transfer are included in the outlays shown for reimbursable programs.

B. Personnel Compensation and Benefits

The Conference is authorized to employ 25 full-time equivalents (work-years). The Chairman and his personal staff (one secretary and one professional assistant) constitute three

FTEs. One and one-half FTEs are needed to perform receptionist and phone answering services for the Conference. One and one-half FTEs are used to maintain the library which serves as a federal depository library open to the public in addition to its function as the Conference's principal legal research facility. One and one-half FTEs are assigned to handle Conference publications including writing, layout, graphic design, contracting with GPO, and public affairs functions. Two and one-half FTEs are assigned agency administrative functions including procurement, budget, personnel, payroll, time and attendance, recruitment, and accounting. Three FTEs are assigned management and general counsel functions associated with planning and executing Conference activities including research, Recommendations, legislative initiatives, and implementation strategies. Five FTEs are professional attorneys assigned to standing Conference committees to provide staff research support and management of committee schedules and initiatives. Six FTEs provide secretarial and clerical support to the professional staff, maintain Conference files and records, handle correspondence and mail, and respond to public and Conference member inquiries. One FTE, needed to manage membership activities, arrange facilities for Conference events, and assist attorneys in research activities, remains unfilled due to budgetary limitations.

C. Research and Recommendations

1989 Activities

During Fiscal Year 1989 the Administrative Conference held two Plenary Sessions, one on December 8 and 9, 1988 and the second on June 15 and 16, 1989. Eight Recommendations and one statement were adopted at these two sessions and covered issues in the following thematic categories: Financial Services Regulation, Immigration, Alternative Dispute Resolution, Government Ethics Regulation, and Judicial Review.

RECOMMENDATION 88-9, *Presidential Review of Agency Rulemaking*, suggests procedures for OMB review that ensure enhanced public access to the process consistent with a need for confidentiality during the decisionmaking process. It recommends that presidential review should apply as a matter of principle to independent regulatory agencies to the same extent as to the rulemaking of executive departments and agencies. It recognizes the benefits of executive oversight and dialogue to identify conflicts with other federal programs and to insure agency consideration of the facts and policies important to the President to the extent permitted by law. The Recommendation also recognizes that some types of agency rulemaking are not appropriate for review where the agency's statutory independence would be jeopardized.

RECOMMENDATION 88-10, *Federal Agency Use of Computers in Acquiring and Releasing Information*, addresses the applicability of the Freedom of Information Act to information and data kept by agencies in electronic form. The Recommendation sets out the considerations and procedures which bear on the decision to acquire information from the public in electronic form, and those which affect an agency's decision to make government information available in electronic form.

RECOMMENDATION 88-11, *Encouraging Settlements by Protecting Mediator Confidentiality*, continues the Conference's emphasis on the use of alternative dispute resolution. Agencies using ADR neutrals in settlement proceedings are encouraged to issue policy directives, agreements with the neutrals, and rules to protect the confidentiality of a neutral's notes, memos, or documents which reflect confidences disclosed to the neutral during the course of negotiations.

RECOMMENDATION 89-1, *Peer Review and Sanctions in the Medicare Program*, urges greater sharing of information by Peer Review Organizations under contract with HHS with hospitals and state medical boards. Better dissemination of program guidelines and improved notice of appeal rights to beneficiaries are also recommended. Substantial changes to the peer review sanction process are suggested.

RECOMMENDATION 89-2, *Contracting Officers' Management of Disputes* suggests steps to increase the ability and authority of contracting officers to resolve contract disputes. Recommended steps include agency support of alternative dispute resolution techniques and increased training of contracting officers in ADR techniques.

RECOMMENDATION 89-3, *Conflict of Interest Requirements for Federal Advisory Committees* addresses confusing and inconsistent practices of the departments and agencies in applying conflict-of-interest rules to advisory committee members. A minimal financial disclosure requirement for committee members is recommended. Also urged is a clear determination concerning whether committee members are special government employees when an advisory committee is chartered.

RECOMMENDATION 89-4, *Asylum Adjudication Procedures* proposes to the Department of Justice a new process to replace the current elongated process used by INS to process claims for asylum.

RECOMMENDATION 89-5, *Achieving Judicial Acceptance of Agency Statutory Interpretation* asks agencies to use appropriate procedures when they adopt interpretations of statutes that are intended to be definitive on judicial review under the deference test set forth by the U.S. Supreme Court in *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

Mass Decisionmaking Programs: The Alien Legalization Experience is a Statement made by the Conference as a result of a study reviewed by the Committee on Adjudication. It suggests improvements that can be made by the INS in the legalization program and identifies lessons that can be applied in future mass decisionmaking programs by the INS or by other agencies.

The text of Recommendations adopted at the June 1989 plenary session are attached as Tab D. The most recent volume of the Administrative Conference Reports and Recommendations for 1988 is attached as Tab E.

1990 Activities

So far during Fiscal Year 1990 the Administrative Conference has held one Plenary Session, on December 14 and 15, 1989. A second is currently scheduled for June 6 and 7, 1990. Four Recommendations and one statement were adopted at the December session. The Recommendations involved federal regulation of biotechnology, agency indexing of adjudicatory decisions, processing and review of visa denials, and improved use of medical personnel in Social Security disability determinations. The statement concerned federal personnel disputes.

RECOMMENDATION 89-7, *Federal Regulation of Biotechnology*, recommends steps to improve interagency coordination of federal biotechnology regulation. These include enlarging the membership of the Office of Science and Technology Policy's Biotechnology Science Coordinating Committee and opening its proceedings to the public unless they involve confidential information. While the Conference recommends no statutory changes now, it suggests that a survey of biotechnology development and existing regulation be conducted, and that the President and Congress monitor interagency coordination of biotechnology regulation. The Conference also suggests that agencies consider adopting appropriate procedures concerning availability of information and public participation in biotechnology regulatory proceedings.

RECOMMENDATION 89-8, *Agency Indexing of Adjudicatory Decisions*, calls upon agencies to compile a subject-matter index of their adjudicatory decisions to afford citizens information useful in dealing with the agencies and to assist the development of agency standards and policies on general issues and recurring questions. Indexes, which should be public, may be either universal or selective. The Recommendation advises agencies to include in a selective index all significant adjudicatory decisions of the agency's highest level tribunal, whether or not they are considered precedents. Agencies are advised to consider indexing significant lower level final decisions.

RECOMMENDATION 89-9, *Processing and Review of Visa Denials*, recommends that the Department of State implement a number of changes in its procedures for review of visa applications at United States consulates abroad. Such changes include permitting the assistance of attorneys, increased explanation of the basis for visa denials, and making public advisory opinions of the Visa Office. The Recommendation also asks the State Department, after appropriate study, to develop and submit to Congress a proposed process for administrative review of consular visa actions.

RECOMMENDATION 89-10, *Improved Use of Medical Personnel in Social Security Disability Determinations*, recommends steps that SSA should take to increase the role of medical personnel at the initial decision stage of disability claims, including giving the medical member of the team primary responsibility for developing medical evidence in the record and using medical personnel to resolve conflicts on medical issues. It also recommends that SSA (1) provide medical personnel training on legal and program issues; (2) eliminate the separate reconsideration stage; and (3) encourage its administrative law judges to use independent medical experts to assess the need for additional medical evidence.

In a Statement, *Procedures for Resolving Federal Personnel Disputes*, the Conference suggests that Congress review the highly complex procedural framework set up by the Civil Service Reform Act. The Conference notes that the existing intricate procedures, consciously designed by Congress, have been perceived by employees and their representatives as providing necessary protection, and the question whether to retain or modify those procedures must be resolved largely through the legislative process. The Statement describes several issues that should be considered in a comprehensive congressional review.

Research already funded by FY-89 money and new research undertaken as a result of interagency transfers under the Economy in Government Act constitutes the majority of remaining Conference research endeavors in FY-90. Research is currently being undertaken in the following nine areas:

1. Financial Services Regulation.

The Special Committee on Financial Services Regulation has proposed a recommendation concerning the procedural and regulatory problems raised by failing and almost failing banks. Conference consultants have been retained to review procedures relating to audit and inspection of banking agencies and the regulation of bank failures. Information was provided to Congressional committees drafting legislation in the area of federal bank regulatory enforcement. The four major banking agencies with significant authority to administer the Securities Exchange Act of 1934 will be studied, focusing on their implementation of statutory authority including the administrative practice of incorporating by reference portions of the Securities and Exchange Commission's regulations. A study of "government sponsored enterprises", federally chartered national financial institutions whose borrowing and lending powers are backed by federal guarantees to examine the regulatory framework governing these institutions, is being conducted.

2. Immigration Procedures.

Letters seeking implementation of Conference procedural Recommendations in this area have been dispatched. The Conference's study of asylum procedures is being reviewed by the Department of Justice, and the Recommendation on visa procedures is being reviewed by the Department of State.

3. Alternate Dispute Resolution.

The Conference will continue its work in ADR by completing installation of a government-wide roster of ADR "neutrals" and by studying confidentiality concerns associated with mediation. In addition, it will continue its examination of the use of arbitration and mediation in the U.S.-Canada Free Trade Agreement and examine the implications of international standard setting and EC-1992 for administrative agencies and regulatory standards. The use of ombudsmen in the IRS and EPA will be examined to see whether this ADR tool has potential for broader use throughout the federal government. Finally, the Conference will continue its efforts to encourage agencies to use negotiated rulemaking in appropriate cases. This effort may require addition emphasis and resources if the legislation encouraging negotiated rulemaking is enacted.

4. Health and Welfare

A study and preliminary evaluation of the procedural aspects of the national child vaccine injury compensation program has been initiated. A procedural overview and analysis of the Medicaid program is underway. The designation of "representative payees" for social security beneficiaries is being studied at the behest of SSA, focusing on current case law concerning SSA's obligations and related state guardianship, custody, and competency law.

5. Government Personnel.

At its December 1989 Plenary Session, the Conference issued a statement concerning the federal employee personnel grievance and appeals system. A study is currently being conducted concerning the *Pro Bono* practice of government attorneys and the restrictions which govern their practice before federal agencies to see if modifications are appropriate or feasible.

6. Regulation.

An examination of "right-to-know" statutes administered by EPA, OSHA and FDA will be completed and the Conference's committee will determine whether Recommendations should be formulated concerning risk communication as a regulatory approach. The federal regulation of biotechnology Recommendation is being distributed and review of the establishment of revolving funds for remedial and compensatory purposes is underway. Also to be studied is the use of off-budget revolving funds to clean up environmental pollution, fix highways and airports, compensate fishermen, etc. to see how these funds are established and operate.

7. Rulemaking.

The Conference will complete its revision of its widely-used *Guide to Federal Agency Rulemaking*. In addition to the just completed work concerning agency practices in indexing and making available in usable form their adjudicatory decisions with particular focus on informal adjudication, the history of recent disputes over Congressional access to internal agency memoranda and Commissioner's notes and whether better methods of resolving such disputes can be identified is being studied.

8. Adjudication.

The Conference expects to make major progress on its two-year effort to develop model rules of practice for agency adjudication. A survey of agency use of hearing officers who are not administrative law judges is being conducted and the survey results may result in a need for Recommendations.

9. Judicial Review.

The Conference's Committee on Judicial Review is exploring the results of judicial remands of cases to administrative agencies as well as the appropriate scope of judicial deference which should be given agency decisions. Also being considered is the allocation of adjudicative responsibilities between agencies and courts, *i.e.*, whether adjudicative responsibility should be in the administrative agencies, Article I courts, or Article III courts.

Not all of these projects will be considered at the June 1990 Plenary Session, of course, but those not completed at that time will be among the prime candidates for the December 1990 Session.

1991 Request

If the Conference receives its full request for FY-91 it will be able to select five or six new projects from the listed items on which to commence new research. Several additional projects may also be possible if the affected agencies are willing to support the Conference under the Economy in Government Act. Although no decisions have yet been made, projects will likely be chosen from among the following suggested areas:

Alternative Dispute Resolution

-- The role of arbitration in securities and commodities regulation
-- Mediation of federal employee EEO disputes
-- Use of ADR in federal tort claims
-- Evaluation of resolution of forest management disputes

Rulemaking and Public Information

-- FOIA access to computer software and proprietary data submitted in electronic form
-- Evaluation of SEC no-action letters; need for CFTC no-action letters
-- The administrative record in rulemaking: contents, availability, role in judicial review
-- Agency use of consultants in the rulemaking process
-- Interplay of FOIA and APA in rulemaking
-- The special needs and problems of Presidential advisory committees
-- Obtaining adequate evidence before issuing industry-wide rules
-- Review of the Privacy Act
-- Use of OMB Circulars to guide agencies

Coordination

-- The special status of government corporations
-- Agency/Department of Justice roles in litigation (including memos of understanding)
-- Study of federally-approved compacts
-- State/federal coordination in auditing federal grants
-- The impact of impact statements
-- ICC-state relationships under the Staggers Rail Act of 1980
-- "Jurisdiction by agreement" --role of memos of understanding
-- Statutes of limitation on agency enforcement proceedings

Federal Employment

-- Private enforcement under the False Claims Act
-- Agency enforcement of post-employment restrictions
-- Agency use of "hotlines"
-- OPM's handling of civil service retirement appeals
-- Government employee participation in for-profit educational programs
-- Avoiding conflicts of interest in grant making

Regulation

- -- Self-regulatory organizations
- -- Use of audited self-certification
- -- Deregulation experience of the CAB, FCC and ICC
- -- Pesticide registration and cancellation
- -- NRC license renewals
- -- Regulation of space: the "new frontier"
- -- Reducing "red tape" for scientists
- -- Implementation of the "bubble" concept in pollution regulation
- -- Environmental auditing
- -- Agricultural marketing orders
- -- Appropriate agency reliance on predictive economic models
- -- How to sunset an agency (lessons to be learned from the CAB)
- -- The concept of de minimis in regulation
- -- How to test existing products for compliance with new standards

Adjudication

- -- Procedures for the debarment and suspension of government contractors
- -- Independence and status of agency review boards and officers
- -- Use of teleconferencing and computer conferences in agency hearings
- -- Reconsideration of ACUS Discovery Recommendation
- -- Compilation of case law that allows or encourages ALJs to speed up hearings
- -- Comparative study of agency case-docketing practices
- -- Agency implementation of the Program Fraud Civil Remedies Act
- -- Need for Code of Judicial Conduct for ALJs
- -- Use of lotteries and auctions in licensing
- -- ALJ evaluation--the state experience
- -- Problems in federal prisoner grievance administration
- -- Review of coast guard enforcement cases
- -- Study of State Department's Board of Appellate Review

Judicial Review
- Statutory preclusion of judicial review
- Specialized courts of reviewing agency action
- Improved small-case review procedure
- Preparation of joint appendices for judicial review of major rulemakings
- Need for better statistics re: agency appeals

Procedural Issues in the Regulation of Financial Services
- Deregulation of financial services -- lessons to be learned from other deregulation
- Need for regulation of: financial planners, bond rating agencies, real estate appraisals relied on by federally insured depository institutions, life insurance companies?
- Review of the Federal Financial Institutions Examination Council
- Regulation in the context of internationalization of banking
- Proposals to enhance the SEC's enforcement powers

Federal Health care
- Ratemaking procedures for hospitals and other Medicare providers
- The future role of the Provider Reimbursement Review Board
- Medicare Part B appeals--new rights, new restrictions
- Federal role in organ donation and transplantation
- Procedures for assessing pain in disability cases
- Medicare fraud and abuse procedures
- How ERISA relates to regulation of employers who self-insure health benefits for employees and retirees

Procedural Aspects of Immigration
- Employer sanction and discrimination adjudications under IRCA
- Right to counsel/representation
- Detention and bond procedures
- Motions to reopen proceedings--when should they be allowed?
- The exclusion/deportation dichotomy
- Revamping the preference system for legal immigration

Tort reform
- Military federal tort claims (the Feres doctrine)
- Indemnification of federal employees who are held liable for official acts
- Evolution of the black lung program--lessons to be learned
- Need for liability insurance for federal employees

Domestic Procedural Aspects of International Trade
- Review of the Export Trading Company Act
- Time limits in Section 337 unfair trade cases
- Foreign Corrupt Practices Act procedures
- Administrative procedures of export restrictions and economic sanctions
- Foreign Trade Zone Procedures
- Survey of agency involvement in international standards development

Agency/Congress relations
- How agencies utilize and organize legislative liaison offices
- Appropriations riders as means of micro-managing agencies
- Independent agencies -- definition, status, future role
- Congressional intervention/participation in agency proceedings

Miscellaneous

- -- How agencies utilize and organize their policy and planning offices
- -- Study of the copyright royalty determination process
- -- Equal Access to Justice Act -- How has it worked?
- -- Foreign Agents Registration Act - How has it worked?
- -- Placement of agency lawyers - to centralize or decentralize?
- -- Legal issues concerning agency development of expert systems and other "artificial intelligence" technologies

If the Conference receives its full request for FY-91 it will be able to select five or six new projects from the listed items on which to commence new research. Several additional projects may also be possible if the affected agencies are willing to support the Conference under the Economy in Government Act.

D. IMPLEMENTATION AND ADVISORY ACTIVITIES

1989 Activities

a. ADR and Regulatory Negotiation

The Administrative Conference has adopted several Recommendations that encourage federal agencies to make greater use of mediation, minitrials, negotiation, arbitration, and related methods to improve their decisionmaking and offer advice on how to begin doing so. In addition, the Office of the Chairman has initiated several new projects in a large scale program exploring specific roles for alternative means of dispute resolution (ADR) in controversies involving federal agencies. Considerable implementation and related research efforts have been initiated. Several agencies have contacted the Conference to begin exploring possible ADR uses in their programs. The Conference has worked with agencies to provide training and support for the boards of contract appeals and others on using minitrials in contract disputes, with ALJs at OSHRC, EPA, and other agencies on improved settlement methods, and with the Environmental Protection Agency's enforcement staff on its ADR guidance. It has assisted the Forest Service with training in mediating land management disputes and is cooperating with the U.S. Court of Appeals for the D.C. Circuit Court Administrator to provide training in ADR techniques for judges and mediators participating in that circuit's new dispute resolution program. The Conference has adopted rules to develop a roster of potential "neutrals" for various kinds of proceedings.

Following the initial successes of the Federal Aviation Administration and the Environmental Protection Agency in using negotiated rulemaking, the Administrative Conference reexamined agency experience in 1985, and in Recommendation 85-5, Procedures for Negotiating Proposed Regulations, refined its earlier advice. The Office of the Chairman has organized a "roundtable" on negotiated rulemaking consisting of agency representatives who meet periodically to exchange information on practical aspects of negotiated rulemaking. A number of agencies are now actively engaged in various stages of negotiated rulemaking proceedings in accordance with the Conference's Recommendations.

b. Legislation.

The Conference continued its efforts in 1989 to review new legislation systematically and provide Congress with advice and assistance on a wide range of legislative matters pertaining to administrative procedure. These efforts led Congress to rely on Conference initiatives in connection with four laws enacted in 1989.

Public Law 101-73, the Financial Institutions Reform Recovery and Enforcement Act of 1989, legislation to restructure the oversight of the thrift industry, included a requirement that the bank regulatory agencies establish their own pool of administrative law judges and develop a set of uniform rules of procedure for administrative hearings before those agencies. The new law implements, in part, Recommendation 87-12. Public Law 101-194, the federal ethics-pay legislation, incorporated Conference Recommendation 88-4 concerning deferred taxation for divestitures required to avoid conflicts of interest. Public Law 101-236 extended for four months the Federal Aviation Administration's civil penalty demonstration project. The extension was granted expressly to permit the Conference to complete its study of the civil penalty program and submit a report to Congress. Public Law 101-235, the Department of Housing and Urban Development Reform Act of 1989, included provisions authorizing the administrative imposition of civil money penalties against certain mortgagees and lenders, multifamily mortgagors, violators of the Interstate Land Sales Full Disclosure Act, and issuers and custodians of mortgages guaranteed by the Government National Mortgage Association. These provisions provide for the imposition of civil money penalties and judicial review in accordance with the procedures proposed in Recommendation 72-6.

Conference proposals were also incorporated into a number of bills introduced during 1989. S. 303 and H.R. 743, the Negotiated Rulemaking Act of 1989, reflected Conference initiatives to provide a legislative underpinning for the conduct of negotiated rulemaking by federal agencies. The bills incorporate the basic provisions of Conference Recommendations 82-4 and 85-5 and provide for various kinds of assistance to agencies by the Conference. S. 303 passed the Senate in 1989 but was not acted on in the House. S. 971 and H.R. 2497, bills introduced by Senator Grassley and co-sponsored by Senator DeConcini, and H.R. 2497, indroduced by Congressman Glickman, to provide a statutory footing for agency use of alternative means of dispute resolution, likewise incorporate numerous Conference recommendations. H.R. 7, a bill to amend the Carl D. Perkins Vocational Education Act, which passed the House in 1989, directed the Secretary of Education to use regulatory negotiation techniques in accordance with Conference guidelines when proposing regulations under the legislation. The bill specifically refers to Conference recommendations.

Both Senator Metzenbaum, the sponsor of S. 436, the Employee Health and Safety Whistleblower Protection Act, a bipartisan bill to protect whistleblowers in the private sector, and Senator Grassley, the lead co-sponsor, commented favorably on the Conference's detailed study of the issue and Recommendation 87-2 when introducing the bill. Both S. 436 and the whistleblower bill introduced in the House by Congressman Ford (Mich.) (H.R. 3368), incorporated Recommendation 87-2 in substantial part.

The Chairman of the Administrative Conference would be one of three members of a selection panel under a bill introduced by Senator Pryor (S. 1570) to establish an independent office of Chief Administrative Law Judge within the Social Security Administration. The Secretary of Health and Human Services would select a Chief Administrative Law Judge from among three nominees submitted by the selection panel.

The Conference presented testimony before six separate House or Senate subcommittees during 1989. Among other things, the Conference offered views to the House Subcommittee on Labor-Management Relations on legislation for the uniform handling and resolution of private sector whistleblower complaints (H.R. 3368); to the House Subcommittee on Administrative Law and Governmental Relations and the Senate Governmental Affairs Committee, respectively, on bills to enhance the use of negotiated rulemaking (H.R. 743) and alternative methods of dispute resolution (S. 971); and to the Subcommittee on Human Resources of the House Post Office and Civil Service Committee on the effects of government ethics restrictions on the recruitment and retention of federal employees. Richard Berg, the Conference's consultant on the application of conflict of interest laws to federal advisory committees, offered his views to the Senate Governmental Affairs Committee at hearings on a bill to amend the Federal Advisory Committee Act (S. 444). The Office of the Chairman provided written comments on S. 444.

The Conference initiated an effort to review new legislation on a systematic basis so as to be able to provide Congress with more comprehensive advice and assistance. As "good government" lobbyists, the Conference staff consulted regularly with Congressional staff on procedural issues embedded in the thrift industry legislation. We alerted the staff of the Senate Judiciary Committee to Recommendation 87-3, "Agency Hiring of Private Attorneys," following the introduction of S. 90, the Legal Fees Equity Act of 1989. We transmitted Recommendation 88-9, "Presidential Review of Agency Rulemaking," to the Senate Governmental Affairs Subcommittee on Government Information and Regulation, in connection with its evaluation of bills to amend and reauthorize the Paperwork Reduction Act. We also urged the House Governmental Operations Subcommittee on Information, Justice and Agriculture to consider Recommendation 88-10, "Federal Agency Use of Computers in Acquiring and Releasing Information," in connection with consideration of electronic information and the Freedom of Information Act. Conference staff also presented Recommendation 89-1, "Peer Review and Sanctions in the Medicare Program," to the Senate Finance Committee and the House Ways and Means Committee, which were developing legislation on this subject.

c. Ethics Regulation

Following the election, the President's Commission on Federal Ethics Law Reform endorsed the Conference Recommendations on Conflict of Interest Divestitures. President and Congress included the Recommendation in Pub. L. 101-194. President Reagan issued a Memorandum to Heads of Departments and Agencies which implemented the Conference's Recommendation 88-1 on Presidential Transition Workers' Code of Conduct.

1990 Activities

The Administrative Conference does not have the funds to mount an organized, systematic effort to implement its Recommendations in FY-90. The Conference will, however, devote resources to assisting Congressional committees in areas of Conference expertise and will be particularly alert to opportunities to do continuing work on the implementation of its ADR Recommendations and its Recommendation 88-10 concerning Federal Agency Use of Computers in Acquiring and Releasing Information.

1991 Request

The Administrative Conference will continue its Fiscal Year 1990 level and mix of activities into Fiscal Year 1991, although some funds will need to be directed to the Conference's Clearinghouse activities which have received inadequate support the past few years. It is, of course, not possible to describe each activity that will be undertaken since the implementation activities will depend in substantial part on the content of formal Recommendations that have not yet been adopted. Similarly, the advisory activities will follow from the nature of Congressional and agency requests that have not been received. It is clear, though, that there will be continuation of the increased level of activity experienced in recent years into Fiscal Year 1991.

Among other things, the Administrative Conference anticipates that extensive implementation activities will be necessary in Fiscal Year 1991 for both the financial services and alternative dispute resolution projects. Both of these projects will involve a large and diverse group of Executive branch entities, and the Congress as well. Its ADR effort will include consensus resolution of agency disputes that wind up in court. In addition, the Conference hopes to provide additional training opportunities for agency personnel on other

Conference Recommendations and on how individual agencies might approach implementation.

The minimal funding (in addition to General Administration and Personnel) necessary to support the Conference's program of agency assistance is $43,000. Consequently, this amount is constant for each of the alternatives addressed in the FY-91 budget request.

E. Clearinghouse Activities

1989 Activities

The Council of Independent Regulatory Agencies (CIRA) is an informal organization composed of the chairs of the thirteen major independent regulatory boards and commissions and the Chairman of the Administrative Conference, who also serves as Chairman of CIRA. At CIRA meetings, agency chairs exchange ideas concerning governmental and regulatory issues and problems, and discuss these issues with select members of the Executive branch, academics, and members of Congress.

This group meets on a regular basis, the typical format being a breakfast meeting at the White House with a key member of the Administration as the group's guest. The agencies whose chairs participate in CIRA are the Commodity Futures Trading Commission, Consumer Product Safety Commission, Equal Employment Opportunity Commission, Federal Communications Commission, Federal Energy Regulatory Commission, Federal Maritime Commission, Federal Reserve System, Federal Trade Commission, International Trade Commission, Interstate Commerce Commission, National Labor Relations Board, Nuclear Regulatory Commission, and the Securities and Exchange Commission. Recent speakers at CIRA breakfasts have included senior members of Congress and Senior White House staff.

The Conference held a number of colloquia and seminars during the year.

The Colloquy Series is designed to allow for the presentation and discussion of issues in administrative law and regulatory procedures that affect administrative agencies. Three successful colloquia during the year included:

-- **Ethics in Government: Where Do We Go From Here?** C. Boyden Gray, Counsel to the President and the Honorable Barney Frank, Congressman (D-Massachusetts) exchanged views on pending ethics initiatives.

-- **Procedural Reform of the Savings and Loan Industry and the New Banking Bill** was the topic discussed by Lawrence G. Baxter, Professor, Duke University School of Law, Richard C. Breeden, Assistant to the President, and M. Danny Wall, Chairman, Federal Home Loan Bank Board.

-- **The Drug Approval Process in the AIDS Era** featured James T. O'Reilly, Chairman ABA Committee on Food, Drug and Cosmetic Law, William B. Schultz, Senior Attorney, Public Citizen Litigation Group, and Frank E. Young, M.D., Commissioner, Food and Drug Administration.

In addition to the colloquia, the Conference held its annual seminar for regulatory agency commissioners and its legislative forum for Congressional staff on administrative law issues. The Conference, with the support of the Department of Commerce, also sponsored an all-day program on the alternative dispute resolution provisions of the U.S. - Canada Free Trade Agreement.

Conference publications are an equally important part of the clearinghouse function. During the year, the Conference published three newsletters which contained information useful to agency personnel concerning ongoing research activities and other Conference initiatives. These newsletters, which are provided to all members of the Senior Executive Service as well as agency personnel directly involved in administrative law issues, prompted numerous requests for Conference publications and research reports relevant to current agency activity. Work was completed on the Negotiated Rulemaking Sourcebook which collects and analyzes in one place many materials useful to agency persons planning and implementing a negotiated rulemaking proceeding. Work commenced on a revision to the Conference's Guide to Agency Rulemaking. Demand for a new revision has been high. Publication of a study guide on the Constitutional issues in arbitration was completed and copies were provided to interested members of Congress and their staffs who were working on ADR legislation. The Conference also produced a monograph describing the powers and responsibilities common to the numerous multi-member independent boards and commissions.

The Conference library, a Federal Depository Library, contains many administrative law materials unavailable in less specialized collections. It responds to continuous requests for assistance.

1990 Activities

The Administrative Conference will continue its annual seminars for legislative staff and regulatory commissioners. The CIRA breakfast program will be continued. It is hoped that at least three colloquia will be held on timely topics. Roundtables for issues in alternative dispute resolution will be continued. The agency's roster of dispute resolution neutrals will be completed and a publication informing agencies how to use the roster will be developed and issued.

1991 Request

This budget reflects a request for funding to undertake seminars, colloquia, government-wide conferences, and other similar activities within the Executive branch, as well as conducting one or two clearinghouse activities. Choices will be made from the following list of items which have been identified as useful and having a potential cost-benefit to the government.

-- Compilation and collection of prior agency procedural reviews
-- Resumption of statistics-gathering on administrative proceedings
-- Revision and updating of:
    (i) Federal Administrative Procedure Sourcebook
    (ii) Interpretive Guide to Government in the Sunshine Act
    (iii) Directory of Administrative Hearing Facilities
    (iv) Federal Grant Dispute Resolution

-- Study the foreign analogs of the Conference and initiatives which have proved effective for resolving administrative problems. (The Conference has been petitioned by Friends of the Earth, International to undertake a slightly modified version of this study which would emphasize models for public participation.)

Pending Research Projects (December, 1989)

As of December 1989, the following research projects were in progress at the Conference. These projects were obligated prior to FY-90, funded from transfers under the Economy in Government Act or funded from grants made to the Conference from private sources. The projects are arranged according to committee assignment. The staff attorney liaison to each committee is noted in parentheses. Projects not yet assigned to a particular committee are listed at the end. Information concerning any of these projects may be obtained from Jeffrey Lubbers, Research Director, 254-7020.

Committee on Adjudication (Nancy Miller)

(1) Reviewability of consular officers' denials of visa applications. (Professor James Nafziger) The current limitations on administrative and judicial review of these denials is scrutinized by this study. (Status: Final report submitted, Conference adopted Recommendation 89-9 at December Plenary Session.)

(2) Review of Social Security disability adjudication process. (Professor Frank Bloch) Overview of the appeals process, comparison with other federal disability programs and consolidated set of prior ACUS recommendations prepared at SSA request; transmitted to SSA Commissioner in July. (Status: Final report submitted, Committee considering a possible recommendation that would supplement the three prior recommendations.)

(3) Use of "non-ALJ" adjudicators. (Judge John Frye of NRC, on nonreimbursable detail to ACUS) Survey of agency use of hearing officers who are not administrative law judges. (Status: Data is now being tabulated, follow-up study may result in recommendations)

(4) The FAA's sanction and enforcement procedures. (Professor Richard H. Fallon, Jr.) The Federal Aviation Authority has authority to revoke pilot licenses as well as impose civil money penalties. It is now imposing penalties of less than $50,000 under a two-year statutory demonstration program which authorizes imposition after administrative hearing. The FAA has asked the Conference to evaluate the appropriateness of the procedures established in the demonstration program to assist the agency in preparing its report to Congress. (Status: Outline submitted, draft report due January 15, 1990.)

(5) HUD administrative grievance procedures for public housing tenants. (Professor Jonathan L. Entin) The Department of Housing and Urban Development has had regulations providing for administrative grievance procedures for public housing tenants since 1975. Several attempts to revise these rules have failed. In addition HUD has begun invoking a 1983 statute authorizing the Secretary to waive administrative grievance procedures in eviction cases and to seek state-court ordered evictions. This study will attempt to provide recommendations to HUD on its grievance rules and its waiver practices. (Status: Work just begun, due August 1990.)

Committee on Administration (Charles Pou, Jr.)

(1) Use of medically-trained deciders in disability cases (Professor Frank Bloch) Evaluation of how doctors and other medically-trained persons are or could be used in deciding social security, VA, black-lung and other disability cases. (Status: Final report submitted; Conference adopted Recommendation 89-10 at December Plenary Session.)

(2) U.S. agency participation in international standard setting. (Professor George Bermann) How should U.S. agency officials prepare for, participate in, and implement the standards negotiated in, international standard-setting bodies? This case study will focus on the Federal Aviation Administration's participation in the European Community's efforts to set standards for airworthiness certification for civil aircraft. (Status: Outline submitted; draft report due next spring.)

(3) Potential uses for ombudsmen in federal programs. (David R. Anderson, Esq.) The recent establishment of ombudsmen in the IRS (to help resolve taxpayer grievances) and EPA (to resolve Superfund disputes) as well as proposals for a beneficiary ombudsman in the Social Security Administration have fueled interest in a wider use of this dispute resolution technique. The study will focus on present and past attempts to create such a post in federal programs. (Status: Outline submitted; draft report due next spring.)

(4) Agency procedures for reviewing discretionary grant applications (Professor Thomas O. McGarity) There is no government-wide statute covering the procedures agencies with discretionary grant authority must use in reviewing applications. This study will examine widely publicized problems in H.U.D. grant programs, which appear to lack a systematic review process, as well as programs of other agencies, including the National Science Foundation which has a rigorous peer review procedure. This project will look at these and other case studies. (Status: Work just begun; due August 1990.)

(5) OSHRC's "simplified proceedings" and case settlement procedures (Professor Morrell E. Mullins) The Occupational Safety and Health Review Commission's rules of practice provide for use of both simplified proceedings and settlement judges in appropriate cases. The study will examine how these rules work in practice. (Status: Outline submitted, due September 1990.)

(6) Implementation of the Farmers Home Administration mediation program (Professor Leonard L. Riskin) The Farm Credit Act of 1988 mandates that the FMHA establish a mediation program to resolve farmer-lender disputes. The study will examine the history of the establishment of the program, the types of disputes involved, the implementing rules, the effectiveness of the program and its possible applicability to other government programs. (Status: Work just begun; due December 1990)

(7) The Fish and Wildlife Service's approach to conflict management under the Endangered Species Act (Professors Steven Yaffee and Julia Wondolleck) Recent litigation in the Pacific Northwest over the impact of timber harvesting on the habitat of the rare spotted owl have focused attention on the need for better conflict management under the Endangered Species Act. This project will examine this and other case studies and will seek to propose improvements in the Service's ability to deal with conflicts. (Status: Work just begun, due January 1991.)

Committee on Governmental Processes (David Pritzker)

(1) Federal employee grievance and personnel appeals process. (Professor William Luneburg) The study of this complex and often redundant system was undertaken at the behest of the Domestic Policy Council and OPM. (Status: Final report submitted; Conference adopted Statement at December Plenary Session.)

(2) Designation of "representative payees" for social security beneficiaries. (Professor Margaret Farrell) Under current law the Social Security Administration (SSA) must designate and monitor the activities of representative payees who receive social security payments on behalf of beneficiaries deemed to be incapable of managing their own financial affairs. At the behest of SSA, the Conference has begun a study of (1) current constitutional and administrative law cases, materials and doctrines pertaining to SSA's obligations in this regard and (2) related state guardianship, custody and competency law. (Status: Outline submitted; report due early 1990.)

(3) Evaluation of the national child vaccine injury compensation program. (Professor Wendy K. Mariner) In 1986 Congress passed a law which attempted to ensure prompt and reasonable compensation to those children who suffer adverse reactions to vaccines (an inevitable result of otherwise highly beneficial immunizations). The law provides for a no-fault compensation program and requires a petition to, and adjudication by, the U.S. Claims Court. Petitioners can then elect to accept the judgment or pursue a tort action in state or federal court -- although with a reduced chance of recovery. The study will describe and preliminarily evaluate the program. (Status: Outline submitted, draft report due next spring.)

(4) Electronic technologies and federal archival practices. (Professor Henry H. Perritt, Jr.) This project is, in a sense, a sequel to Recommendation 88-10 which was principally concerned with agency release of computerized information. This study will examine how electronic records are (and should be) covered by current records preservation statutes. (Status: Work just begun; due August 1990.)

Committee on Judicial Review (Candy Fowler)

(1) Judicial remands of cases to administrative agencies. (Professors Donald Elliott and Peter Schuck) What happens to appeals from agency decisions that are remanded to the agency? (Status: Final report submitted, to be considered during spring.)

(2) Allocation of adjudicative responsibilities between agencies and courts. (Professor Harold Bruff) This study will examine the proper allocation of adjudicative responsibilities among Article III courts (especially the D.C. Circuit), Article I courts and administrative agencies. The study will contain a synthesis and analysis of past and recent proposals, in conjunction with the recently created Federal Courts Study Committee created pursuant to Pub. L. 100-72. (Status: draft report received, to be considered during spring.)

(3) Choice of forum in government contract litigation. (Professor Robert N. Davis) Under current law challengers to government action in contract cases have a multiplicity of forums. In pre-award (bid protest) cases challenges may be filed in district court or with the GAO (or in the GSA Board of Contract Appeals in computer-related contracts). In post-award disputes the choice is between the Claims Court or the appropriate agency board of contract appeals. The study will evaluate the impact of this forum choice and the proposals for change. (Status: Outline submitted, due September 1990.)

(4) The Export Administration Act: licensing procedures and judicial review (Professor Howard N. Fenton) With the upcoming reauthorization of the EAA, this study will focus on issues concerning the regularity, accessibility and openness of the process as well as the appropriateness of the current limitations on judicial review. (Status: Work just begun; due September 1990.)

Committee on Regulation (David Pritzker)

(1) Federal regulation of biotechnology. (Professor Sidney Shapiro) This study examines the need for coordination in this area and for the development of special regulatory procedures. (Status: Final report submitted; Conference adopted Recommenation 89-7 at December Plenary agenda.)

(2) Risk communication as a regulatory approach. (Professor Michael Baram) Examination of "right-to-know" statutes and regulations administered by EPA, OSHA and FDA. (Status: draft report submitted; to be considered this spring.)

(3) FDA's drug approval process for AIDS drugs. (James T. O'Reilly) Pressures to more rapidly approve drugs to combat AIDS has spurred the FDA to reexamine its approval process for such drugs. This study will detail the current drug approval process, including any accommodations made for AIDS drugs. It will evaluate the trade-offs involved and also examine the Medicaid reimbursement process for such drugs. (Status: Outline submitted; draft report due February 1990.)

(4) Establishment of revolving funds for remedial and compensatory purposes. (Professor Frederick Anderson) The federal government has increasingly resorted to off-budget revolving funds to clean up environmental pollution, fix highways and airports, compensate fishermen, etc. How these funds are established and administered is the subject of this study. (Status: Outline submitted; draft report due September 1990.)

(5) Division of roles in joint federal/state regulatory programs. (Professor Errol Meidinger) How "regulatory federalism" works--federal oversight of state implementation of federal programs. (Status: Outline submitted; draft report due September 1990.)

Committee on Rulemaking (Kevin Jessar)

(1) Agency practices in indexing and making available their adjudicatory decisions. (Professor Margaret Gilhooley) This study examines the most appropriate practices in this regard in light of the Freedom of Information Act's requirements, and the practical burdens of making informal adjudication more precedential. (Status: Final report submitted; Conference adopted Recommendation 89-8 at December Plenary Session.)

(2) Congressional access to confidential agency information. (Professor Peter Shane) This study will examine the history of recent disputes over Congressional access to internal agency memoranda and Commissioners' notes and propose better ways of resolving them. (Status: Outline submitted; draft report due early 1990.)

(3) The Medicaid program: aspects of procedure and federalism. (Professor Eleanor Kinney) A procedural overview and analysis of the federalism aspects of the program will be undertaken. (Status: Outline submitted; draft report due early 1990.)

(4) NLRB's establishment of bargaining units by rulemaking (Professor Mark H. Grunewald) For many years commentators have urged the National Labor Relations Board to, at least occasionally, rely on rulemaking rather than adjudication to make policy concerning bargaining units or unfair labor practices. In April, 1989 the Board issued a final rule concerning bargaining units in the health care industry. This case study will examine the results of this action and evaluate it. (Status: Outline submitted; due September 1990.)

(5) Procedures for making determinations in antidumping and countervailing duty cases (Professors John H. Jackson and William J. Davey) Members of the international trade bar as well as government officials in the area have urged the need for a procedural review of this program. The study will focus on a broad overview of the procedure, both at the Department of Commerce and the U.S. International Trade Commission. (Status: Outline submitted; due August 1990.)

Special Committee on Government Ethics Regulation (Michael Bowers)

(1) Pro bono practice by government attorneys (Professor Lisa Lerman) Government attorneys may in some circumstances engage in outside employment. They are, however, precluded from representing clients before agencies of the U.S. Government. This restriction has limited the ability of attorneys to take pro bono cases that may involve the government. The study will examine this issue to see if modifications in current practice are appropriate or feasible. (Status: Outline submitted, draft report due in early 1990.)

(2) Role of government and private attorneys in representing federal employees who are under investigation or sued in their official capacity for alleged wrongdoing (Professor Nancy J. Moore) This study will examine issues such as (1) when it is advisable or necessary for a federal employee to obtain counsel, (2) problems that arise when the government initially represents a federal employee, but later recommends that he or she retain private counsel, (3) limits on a private attorney's representation of a federal employee in agency investigations, and (4) payment of attorneys fees when a federal employee retains private counsel. (Status: Work just begun, due August 1990.)

Special Committee on Financial Services Regulation (Brian Murphy)

(1) Administrative problems of bank failures (Professors Jonathan Macey and Geoffrey Miller) Study of procedural and regulatory problems raised by failing or almost-failing banks. (Status: Final report submitted, Committee recommendation deferred to June Plenary agenda.)

(2) Oversight and regulation of government-sponsored enterprises (Thomas Stanton, Esq.) The recent financial liability of the savings and loan trust fund has focused attention on other federally chartered national financial institutions whose borrowing and lending powers are backed by federal guarantees. Examples include the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). These GSEs can expose the U.S. Treasury to heavy liability, but are regulated in a relatively fragmented and sporadic manner. The study will suggest improvements in this regard. (Status: Draft report submitted, Committee to consider whether to take up these issues this spring.)

(3) Administration of the Securities Exchange Act of 1934 by the bank regulatory agencies. (Professor Michael Malloy) The four major banking agencies have significant authority to administer various provisions of the 1934 Securities Act, with respect to the institutions under their purview. This study will focus on the agencies' implementation of this responsibility -- including several agencies' practice of simply incorporating by reference SEC regulations. (Status: Outline received, draft report due early 1990.)

(4) Audit and inspection practices of the banking agencies (Professor Roy Schotland) Study of how bank examiners make "informal" determinations during audits and examinations, disclosure of audit results, etc. (Status: Project reassigned to new consultant; draft report due mid 1990.)

(5) Federal bank regulatory enforcement -- present and future. (Professor Lawrence Baxter) This study will focus on the enforcement procedures, contained in the Financial Institutions Reform, Recovery and Enforcement Act of 1989. (Status: Analysis of banking legislation submitted; draft report due mid 1990.)

Working Group on Model Rules (Gary Edles)

(1) Model rules of practice for agency adjudication. (Dean Michael Cox) As reporter for the working group, Dean Cox will examine existing rules of practice and help develop text and commentary for model rules. (Status: Dean Cox is reviewing agency rules, Working Group continues to meet regularly to review his work.)

Unassigned projects

(1) Inspectors general (Dean Paul Light) With the support of the Governance Institute, this study will examine the role and operations of Offices of Inspector General in carrying out responsibilities of internal oversight of agency programs and in preventing waste, fraud and abuse. IGs' independence, accountability, investigative authority and relationships with Congress, the President, and agency program managers will be studied. (Status: Work just begun; draft report due September, 1990.)

Other projects

(1) Updated Guide to Federal Agency Rulemaking. (Professor Benjamin Mintz) The popular 1983 ACUS Guide to Federal Agency Rulemaking is being updated. Revised draft chapters are under review, with complete manuscript due by end of 1990. Staffed by Michael Bowers and Nancy Miller.

(2) Legislative drafting guide for grant legislation. (Malcolm Mason) The Guide has been submitted and circulated for comments. It is being readied for publication by Charles Pou.

(3) Dispute resolution under the U.S. - Canada Free Trade Agreement (Professor Andreas Lowenfeld) At the behest of the Department of Commerce, the Conference convened an advisory group to look into the implementation of certain dispute resolution provisions in the Agreement. A seminar of experts was held in January; its proceedings are being published by the Stanford International Law Journal. The advisory group, with the assistance of Professor Lowenfeld, and staffed by Charles Pou and Brian Murphy, will consider what further steps to take.

(4) Sourcebook on Negotiated Rulemaking. Under David Pritzker's direction, the Office of the Chairman is preparing a sourcebook of background materials and guidance concerning negotiated rulemaking. The format will be similar to earlier Sourcebooks on Federal Administrative Procedure and on Federal Agency Use of Alternative Dispute Resolution. It is currently awaiting publication by GPO; a summary is available.

ADMINISTRATIVE CONFERENCE FY 90 BUDGET PROJECTIONS

As of 1/1/90

OBJECT CLASSIFICATION	OBLIGATIONS FY90	PROJECTIONS To 9/30	TOTAL PROJ+OBLI 10/1-9/30	BUDGET AUTHORITY	DIFFERENCE
PERSONNEL COMP. (SubTo	$249,276.02	$1,027,738.84	$1,277,014.86	$1,310,000.00	$32,985.14
Full Time Permanent	196,076.96	742,281.00	$938,357.96	1,073,000.00	134,642.04
Part Time & Temp	31,322.73	135,927.27	$167,250.00	72,000.00	(95,250.00)
Awards/Other		17,000.00	$17,000.00	9,530.00	(7,470.00)
Personnel Benefits	21,876.33	132,530.57	$154,406.90	155,470.00	1,063.10
					0.00
TRAVEL (Sub Tot/Category)	$18,669.51	$55,430.49	$74,100.00	$63,000.00	($11,100.00)
ACUS Staff	1,407.99	8,592.01	10,000.00	7,600.00	(2,400.00)
Council	754.10	4,345.90	5,100.00	6,000.00	900.00
Assembly	7,902.73	8,097.27	16,000.00	9,800.00	(6,200.00)
Plenary	2,710.40	12,289.60	15,000.00	15,000.00	0.00
Research (Consult)	5,894.29	22,105.71	28,000.00	24,600.00	(3,400.00)
STD LEVEL USE CHRG SP	$52,744.00	$156,256.00	$209,000.00	$209,000.00	$0.00
COMMUNICATIONS/OTHE	$11,766.86	$74,843.14	$86,610.00	$75,000.00	($11,610.00)
Other Rent	3,914.00	36,086.00	40,000.00	38,000.00	
Comm (Tel/pstg/Exp)	7,318.37	34,281.63	41,600.00	37,000.00	
Messenger	534.49	4,475.51	5,010.00		
PRINTING/PHOTOGRAPHY	$2,375.00	$101,125.00	$103,500.00	$77,000.00	($26,500.00)

ADMINISTRATIVE CONFERENCE FY-90 BUDGET PROJECTIONS

Recommendations/Rpts		$13,000.00			
Annual Report		6,000.00			
CFR		15,000.00			
Fed. Reg.	2,375.00	18,625.00			
Report Covers		1,000.00			
Newsletter		12,000.00			
Gatty Photography		5,500.00			
Other Printing		30,000.00			
OTHER SERVICES	$5,069.50	$63,210.80	$68,280.30	$50,000.00	($18,280.30)
Repairs	2,175.00	9,325.00	11,500.00		
Interagency	2,005.00	20,995.00	23,000.00		
# Support Contracts		18,780.30	18,780.30		
General	6,219.70	18,780.30			
Research Contracts	889.50	14,110.50	15,000.00		
Res.Asst Payment	889.50	14,110.50			
SUPPLIES/MATERIALS	$8,993.70	$61,891.90	$70,885.60	$56,000.00	($14,885.60)
Office	3,885.60	31,000.00	34,885.60		
Library	5,108.10	30,891.90	36,000.00		
EQUIPMENT		$25,000.00	$25,000.00	$25,000.00	$0.00

ADMINISTRATIVE CONFERENCE FY 90 BUDGET PROJECTIONS

TOTALS	$348,894.59	$1,565,496.17	$1,914,390.76	$1,865,000.00	($49,390.76)
Economy in Government Funds					35,000.00
Direct Contract Reimbursement					0.00
				Balance	(14,390.76)

WEDNESDAY, MARCH 14, 1990.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

WITNESSES

HON. LINDY BOGGS, U.S. HOUSE OF REPRESENTATIVES
DR. DON W. WILSON, ARCHIVIST OF THE UNITED STATES
CLAUDINE J. WEIHER, DEPUTY ARCHIVIST OF THE UNITED STATES
JAMES C. MEGRONIGLE, ASSISTANT ARCHIVIST FOR MANAGEMENT AND ADMINISTRATION

OPENING REMARKS

Mr. ROYBAL. The committee will come to order. The committee is in session this morning to hear from the National Archives and Records Administration, and ask that Dr. Wilson and Ms. Weiher to proceed in any manner they may desire.

Dr. WILSON. Thank you, Mr. Chairman. Congresswoman Boggs, did you want to address the committee first?

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

Ms. BOGGS. Mr. Chairman, with your indulgence, the Energy and Water Subcommittee is meeting in closed session, if I may read my testimony now?

Mr. ROYBAL. The chair will now recognize Ms. Lindy Boggs. First of all, I would like to welcome you to the committee. I understand that you are a Member and in good standing, incidentally; and ask you to proceed in any manner that you may desire.

Ms. BOGGS. Thank you so much, Mr. Chairman. I have submitted my full statement to the committee, and it has been received. If I may, I would just like to summarize.

Mr. ROYBAL. Without objection, we will move your full testimony in the record.

[The information follows:]

STATEMENT

OF

HONORABLE LINDY (MRS. HALE) BOGGS

BEFORE THE

HOUSE APPROPRIATIONS SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT

MARCH 14, 1990

Mr. Chairman, I want to thank you for giving me the opportunity to speak with the subcommittee this morning. I appear in behalf of the grant programs of the National Historical Publications and Records Commission. As you know, the Commission is a statutory body affiliated with the National Archives. The Commission promotes the preservation and availability of our national documentary heritage by making grants to state, local and educational institutions in assisting them to preserve documents and, for the most important ones, in publishing and making them available for use by our people in researching and understanding our past.

During the Reagan years, the Commission's grant program was eliminated by the Administration in each budget, and this House and the other body restored funding each year so that the Commission could continue to do its vital work. But our restorations were limited and never amounted to more than $4 million until this current year. For the long period from 1979 until 1989, the Commission's annual funding level of $4 million declined in real value to a mere fraction of what it originally represented.

For the current fiscal year, the Congress appropriated $5 million, and the Commission's program has benefited from the relief it gives to ongoing projects and the opportunity for vitally important initiatives.

The Commission's Records Program has been able to initiate support for a major new effort focusing on the archival preservation of and research access to information in electronic form. Electronic records projects funded so far this year include a major conference on government archives and electronic records, research to determine the historical significance of administrative data files created in universities, a report on digital imaging technology as it affects public records, and an education program to teach archivists how to manage automated records and use automated techniques, such as online bibliographic networks.

Increased grant funds this year are also supporting important programs in the states. Regrant programs administered by the states have a direct impact on historical records at the grassroots level. New York has received a major award that will match Federal funds with state monies to support the work of local historical records repositories in that state, while South Carolina has received a similar award aimed at developing records programs for local governments. The Commission is supporting statewide educational programs in Colorado and Texas, and projects as diverse as a survey of African-American records in Mississippi (Jackson State University), development of an archival program for the Julliard School (New York), and preparation of a guide to the historical records of Los Angeles County (California). The Commission's Records Program provides truly national support for the preservation of endangered historical records, the development of sound management programs for archival records, and archival education and research.

With the additional funding provided to NHPRC's Publications

Program for Fiscal Year 1990, the Commission was able to support the collecting, editing and publishing of the papers of the Founding Fathers -- Jefferson, Madison, Adams, Franklin and Washington, and other significant American historical figures at a level more closely reflective of their financial needs. Each of these projects is recording for scholarly and popular use the historical documents so essential to the understanding of America's past. These additional grant funds saved some projects from financial disaster. The immediate example that comes to mind is a project close to the interest of this body -- the *Documentary History of the First Federal Congress*.

While the NHPRC continues to support ongoing projects, it has with the limited funding available encouraged much needed efforts to preserve, collect, edit and publish the papers of other individuals whose contributions to the greatness of our country are undeniable. For example, the project to publish the Legal Papers of Abraham Lincoln has been launched.

In addition, beyond the editorial support for these projects, the Commission provides subvention grants to some thirty university presses to publish and distribute these fine volumes. Emphasizing marketing and wider distribution, this program has enabled scholars and others to have greater access to these important editions of papers. Also, with concern of the education of future scholars, the NHPRC uses a modest amount of funds to support fellowships, institutes, conferences and studies which provide training in historical preservation and publication. Yet there is much work to be done.

For Fiscal Year 1991, we see the Administration, for the first time in nine years, recognizing the validity and effectiveness of the Commission's program by including funding for it in the President's budget. But the amount provided, at $4 million, is inadequate to present need. An authorization for the NHPRC program was passed by the Congress in 1988 and signed by President Reagan; it authorized funding at the level of $10 million each year for FY 1991, 1992, and 1993. To carry on its important work, the Commission ought to be funded at a minimum of $8 million. Among activities that could be supported are the following:

The Records Program would be able to launch new initiatives in the area of electronic records projects. This work must go forward immediately if we are to save the historically significant information currently being created in electronic form and preserve it for future generations. Funding for state-administered regrant projects, which directly benefit local institutions in the states, would be increased. At the present time, the Commission is able to fund only two of these projects each year. Finally, additional grants would be made to preserve and make available archives and manuscript collections reflecting the diversity of our nation's history, to educate records custodians, to develop automated description systems, and to establish archival programs in local governments, nonprofit organizations, colleges and universities, and other institutions throughout the country.

An increase in funding to $8 million from the present level of $5 million will help secure from financial need of such important documentary editing projects as Jefferson, Adams, Washington, U.S. Grant, Frederick Douglass, Diego de Vargas, Stanton-Anthony, the Documentary History of the Southwest and Freedmen In Southern Society. Overall funding for these projects is still well below necessary funding levels. In addition, there is a great need for financial support for new publications projects including the papers of Robert A. Taft, Eleanor Roosevelt, Robert E. Lee, James Monroe, the petitions of blacks to Southern legislatures, the letters and writings of Japanese-Americans interned in the United States and the letters of soldiers serving in the Armed Forces during World War II. The Commission is also planning to establish a program to preseve and publish documents illustrating the early years of various immigrant groups as they struggled to adapt to a new life in the United States. I should note that for every $40 provided by the NHPRC an additional $60 is provided by other sources. Such foundations as Ford, Rockefeller, Mellon and Hewlett -- among others -- have supported projects initiated, guided and funded by the Commission. A strong federal component will assure additional support for these scholarly endeavors.

The papers of Presidents, Congressmen and Senators as well as scientists, explorers, artists, Blacks and women are now being made available for research, writing and study. With Commission support more than 600 volumes and some 8600 microfilm reels hold valuable documents of individual accomplishment, collective action, even heroic adventure.

The increase that I am requesting will enable the NHPRC to continue its important work at a more secure level of funding and, with the traditional economy of the use of funds long associated with this Commission, to help foster the preservation, publication and use of America's significant historical documents.

Mr. Chairman, as you know, this program has been vigorously supported over the years by advocates in the historical and archival professions who tell us that time runs out on historical documentation. As much as we want to know the past, to understand our origins and to teach our young, we must realize that the documents disappear unless we take the positive steps to preserve them and make them available for use. The NHPRC grant program is devoted to that purpose, and I must say that for its modest levels of funding it is indeed highly effective. I urge the Committee to consider providing $8 million for this purpose.

This proposal, Mr. Chairman, should stand alone, separate and apart from the operating budget needed for the National Archives and Records Administration. That agency has been equally hard pressed for necessary resources over these years, and vitally needs its resources to deal with records and archives business at the Federal level.

Ms. Boggs. I am very pleased, Mr. Chairman, to appear before this subcommittee in support of an increase in funding for the grant program of the National Historical Publications and Records Commission. I serve as a member of the Commission by appointment of the Speaker.

An increase above the current level proposed by the Administration will enable the Commission to relieve the severe funding shortage that has plagued the many deserving documentary editing projects supported by the Commission—projects like the papers of Thomas Jefferson, James Madison, Benjamin Franklin, Andrew Jackson, Jefferson Davis, and Don Diego de Vargas, as well as a Hispanic history of the southwest, the Legal Papers of Abraham Lincoln, and the documentary history of slavery and emancipation.

Additional funds will enable the Commission to inaugurate support for a few new projects—the Papers of Thomas Edison, Robert A. Taft, and Robert E. Lee, and to undertake much-needed initiatives in support of records preservation, which, as you know, Mr. Chairman, and Members of the committee, is a really very, very difficult task these days, especially concerning the impact of electronic technology upon record keeping.

For the first time in nine years, the Administration has indicated its support of the NHPRC's program by including funding for it in the President's budget at $4 million. You will remember that through all of the Reagan Presidency years, it was this committee and its sister companion committee and the Senate that had to put in some monies for this wonderful program because the Administration sought to eliminate grant funding.

We could not allow that to happen, because, of course, the program is designed to keep our national documentary heritage, and the Congress, through the efforts of this committee, has assured funding for the grants at the modest level of $4 million a year.

While the program survived and continues to do its useful work, keeping it a constant level of $4 million for so long a period, from 1979 to 1989, with reduced levels in 1982, meant, in effect, a steady reduction in the funding for this excellent and valid program.

During this current fiscal year, and for the first increase in 11 years, the Congress appropriated $5 million for the NHPRC grant program. This increase has enabled the Commission to provide modest increases in funding to deserving projects, and has saved at least two projects from financial distress. However, there is a greater financial need, and much work to be done in securing the country's documentary heritage.

Mr. Chairman, as a fellow member of the Appropriations Committee, one of the statistics that pleases me the most about this program is the fact that for every $40 the program spends in these regards, is matched by $60 from other grants organizations, mostly private funding, so it is a producer of monies to the government as well as being able to preserve our documentary heritage.

In light of the current authorization, which is marvelous at $10 million, and the need to support this modest yet vital effort to assure preservation and public use of important historical materials, I would ask the committee to support a minimum of $8 million for the NHPRC grant program in fiscal year 1991.

You have excellent witnesses, Mr. Chairman, members of the committee who will flesh out these requests, and we are very fortunate to have the kind of leadership that we have at the Archives.

I would be happy to answer any questions if you have them for me.

GRANTS REQUEST

Mr. ROYBAL. Ms. Boggs, the request now of the National Archives is $3,160,000 more than it was last year. And the amounts that you are requesting is over and above that amount, but it is to be used for the NHPRC grant program. Is that correct?

Ms. BOGGS. Yes, Mr. Chairman.

Mr. ROYBAL. What is the amount now recommended for that program?

Ms. BOGGS. There is an authorization of $10,000,000, and what we are recommending is at least $8,000,000, Mr. Chairman.

Mr. ROYBAL. Mr. Skeen.

Mr. SKEEN. I have no questions, Mr. Chairman. I would just like to comment.

You certainly have taken a vital interest in this project, and present the request well, and I think that we are going to try to fund it the best we can, depending on what our parameters turn out to be under our allocations, and so forth, but you certainly have made, I think, a telling plan.

Ms. BOGGS. May I say one other thing?

Mr. SKEEN. Surely.

GRANTS TO STATES

Ms. BOGGS. The grants to the states from the Commission are considerable. We did a survey several years ago of the state of the Archives out within the states, and encouraged them to do this, and that survey made us recognize how desperately the states really need this kind of leadership from this Commission.

So that all of the states really benefit from the work that the Commission accomplishes and from the grants that it is able, in a limited capacity, to be able to give. I think that almost every Member of Congress would find something within its work that has been helpful to the home states.

Mr. SKEEN. You certainly have touched on the history of the southwest and the Hispanics records, and I think you have touched two members of this panel very deeply, and we appreciate it very much. Good presentation.

Ms. BOGGS. Thank you.

Mr. ROYBAL. Ms. Boggs, this committee has been very favorable to the Archives over the years. We have not done as well as we should have, but better than the recommendation made by the Administration. We will take your recommendation under advisement, and, if at all possible, we will try to grant it.

Ms. BOGGS. Thank you, Mr. Chairman. You have saved the program, and we are very grateful to you. Thank you. Thank you so much.

Mr. ROYBAL. Dr. Wilson, will you proceed?

OPENING STATEMENT

Dr. **WILSON**. Thank you, Mr. Chairman. I would like to express my thanks to Congresswoman Boggs as well. Her devotion to the Commission and to the Archives has been extremely strong over the years, and she continues to be extremely valuable and valued member of the Commission.

As Archivist of the United States, Mr. Chairman, I am very pleased to have this opportunity to appear before the committee to present the National Archives and Records Administration's 1991 Appropriation request.

I have with me today, Ms. Claudine Weiher, Deputy Archivist of the United States; and Mr. Jim Megronigle, Assistant Archivist for Management and Administration.

With your permission, I would like to submit my formal statement for the record, and briefly highlight a few of the aspects.

Mr. **ROYBAL**. Without objection, so ordered.

[The information follows:]

OPENING STATEMENT OF DON W. WILSON

Mr. Chairman and members of the Committee, I am Don Wilson, Archivist of the United States, and I am pleased to have this opportunity to appear before the Committee to present the National Archives and Records Administration's (NARA) 1991 appropriation request. I have with me today Ms. Claudine Weiher, Deputy Archivist, and Mr. James Megronigle, Assistant Archivist for Management and Administration.

As NARA nears its fifth anniversary as an independent agency, its continuing primary activity is to preserve the nation's cultural heritage and make available the documentary record of our national government. To accomplish this, NARA is responsible for the appraisal and disposition of Federal records and the management, preservation, description, arrangement, and availability of those records of permanent value.

Besides the various locations within the National Capital area housing NARA activities, NARA has an additional 11 field branches. Through these facilities, NARA is able to carry out its archival functions and make the Nation's records of enduring value available for research by the Federal government, scholars, and the general public.

Also, NARA operates a system of 14 Federal records centers where non-current Federal records are stored and serviced economically for Federal agencies until eligible for disposal or transfer to the National Archives. Each year this program results in substantial cost savings for the government by removing records from expensive agency office space to low cost space provided by the records center system, and by carrying out an active and effective records disposition program.

NARA is responsible for publishing administrative regulations, the laws, and Presidential documents, in the Federal Register, and related publications. NARA makes available to the general public all of the significant rule-making documents of the Executive Branch.

Also, NARA reviews for declassification security classified, permanently valuable records and historical materials in accordance with Executive Order 12356 and the Freedom of Information Act.

To supplement and enhance NARA's operation and response to its responsibilities, additional funding is being requested in the areas of preservation, electronic records, and for preparation for the release of the 1920 population census.

Beginning this year and continuing through 1991, the regional offices are expected to acquire substantial quantities of older textual records from substandard agency space. Funding is required to support the preservation and conservation of these newly accessioned records.

Also, we are requesting funds for enhancement of our ability to store electronic records. NARA is not adequately equipped to handle its responsibilities brought on by the ever increasing and varied electronic medias used throughout the Federal government. Resources are required to prepare for the numerous electronic technological differences we encounter. Specific areas targeted are the transfer of electronic records to NARA, and improving record availability and their preservation.

Funds are requested to prepare for the release of the 1920 Decennial Population Census in the Spring of 1992. NARA must copy approximately 10,600 microfilm rolls, which are to be supplied to all 11 regional offices and the Washington, DC research rooms. Futhermore, storage equipment must be procured to house the microfilm.

Presidential Libraries

NARA also administers the system of Presidential libraries where papers and historical materials of American Presidents and their associates are preserved and made available for research. Each year a large number of visitors view significant historical materials displayed in major exhibits in the Presidential libraries. In addition, Presidential materials are administered by NARA pending the establishment of Presidential libraries. At the present, archival personnel are processing records for research usage at the future Ronald Reagan Library.

Funds are being requested for the renovation of the Franklin D. Roosevelt Library. The Roosevelt Library is the oldest of the eight Presidential libraries, and is in need of major repairs to the roof and foundation. Furthermore, other improvements need to be made to the ticket sales office, accommodations for handicapped visitors, and the sidewalk and parking lot areas.

Funds are also requested to move approximately 50,000 cubic feet of Presidential records and audiovisual materials, including a computer system, and office furniture and equipment, to the site of the new Reagan Library, which is scheduled to open in February, 1991. Currently, records are being stored at two sites in Southern California; and the audiovisual collection is being held in the Washington, DC area.

National Historical Publications and Records Commission

The National Historical Publications and Records Commission is an organization under the auspices of NARA which reviews and recommends project grants to Federal and state governments, and private non-profit institutions, chiefly universities and research libraries. It makes plans, estimates, and recommendations for the publication of important historical documents, and works with various public and private institutions in collecting, editing, and publishing papers significant to the history of the United States.

The grants program has been reauthorized through 1993 as a result of Public Law 100-365. This action authorizes funding of $8,000,000 for 1990 and $10,000,000 each year from 1991 through 1993. NARA is requesting an appropriation of $4,000,000 in 1991, which is $1,000,000 less than the $5,000,000 which Congress appropriated in 1990.

Archives II Facility

Public Law 100-440 (102 Stat. 1743-44), the NARA appropriation section, provided authorization for the construction of a new archival facility. The authorizing language permitted the Archives to enter into a contract for construction and related services either by lease or by installment payments payable out of annual appropriations over a period not to exceed 30 years.

An installment sale and trust agreement was entered into as of July 1, 1989 by and between the United States Trust Company of New York and the National Archives and Records Administration. Under terms of this agreement, the trustee obtained financing for the construction of the Archives II facility through the sale of certificates representing proportionate shares of ownership in installment payments to be made by the Archives.

Groundbreaking for the Archives II facility, to be located at College Park, Maryland, occurred on October 17, 1989 and construction is currently ahead of schedule. NARA staff are preparing for this move by accelerating preservation of the records to be moved and are preparing master relocation registers to maintain physical control of the records.

Changes from 1990 Appropriated Fund Level

NARA's request of $128,000,000 is a net increase of $3,160,000 over the 1990 appropriation of $124,840,000.

The overall appropriation request includes increases of $180,000 to aid in the preservation and conservation of the regional archives newly accessioned records; $848,000 to support the electronic records program; $700,000 required to prepare for the release of the 1920 Decennial Population Census; $1,700,000 for Franklin D. Roosevelt Library renovations; and $400,000 to move Reagan Presidential materials to the new library.

Other changes include increases of $930,000 for program restorations to offset the reductions necessitated to fund that portion of the 1990 grants program for which no funds were provided; $1,502,000 for rent rate changes; $618,000 for the the increased cost of goods and services; $1,604,000 for building operation and maintenance; and $538,000 for the annualization of the 1990 pay raise.

These increases are offset by decreases of $4,930,000 for the Herbert Hoover Library/Museum alterations and $930,000 from the 1990 grants program level.

Summary

This budget is basically a continuation of programs at the 1990 level and is intended to enable us to carry out our basic mission. Except for increases to fund the Roosevelt Library renovation, the preservation and conservation of regional records, the support of the electronic records program, preparation for the release of the 1920 Decennial Population Census, and the move of Reagan materials to the new library, the request represents our assessment of resources necessary to continue the ongoing programs which are NARA's mandated responsibilities.

Thank you for the opportunity to make this statement, Mr. Chairman. I will be pleased to respond to your questions.

Dr. **Wilson**. As a way of preface, I would like to say at the outset how grateful we are for the strong support exhibited by this committee for the National Archives. During very difficult budget times, when this committee has had many worthwhile programs competing for scarce resources, you have made the design and construction of a new Archives building possible. You have supported, and indeed saved, the National Historical Publications and Records Commission's grant programs, and you have provided a level of funding necessary to enable the National Archives to carry out its basic mission.

ARCHIVES II FACILITY

First, I would like to briefly update you on the new building. I am very pleased to report that we have successfully and favorably obtained the financing needed. We have concluded our agreement with the University of Maryland for use of the land in perpetuity without charge, and we are nearly finished with site clearing and grading in preparation for construction of the building.

Construction work on the parking structure should begin, I think, by early next month, and the building later this year. Indeed, the project is currently right on schedule, a statement we don't often get to make with government contracts.

Jim Megronigle, I think you have a photograph. I would like to show you the photograph of the model as it is now designed.

[The information follows:]

Dr. **Wilson**. Although the transaction financing the building is reflected in this budget, we will not require appropriations to begin paying the annual installments until fiscal year 1994. On that score, we seem to have found ourselves in somewhat of a controversy concerning least cost financing. I specifically want to assure the committee that for our project, with its unique set of circumstances, this was the most advantageous way to proceed for everyone concerned.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

In the area of NHPRC, this year, as pointed out by Congresswoman Boggs, after 9 years of not submitting a funding request for the NHPRC grant program, we have requested $4,000,000 for grants. In fact, this is nearly $1,000,000 less than appropriated in last year's fiscal year 1990 budget, and a full $6,000,000 less than the authorized level by legislation.

The positive aspect is that it represents an important step in recognizing the role of the program in preserving the nation's heritage. While the grant recipients in the broader historical community believe that much more is needed and required, everyone does agree that returning this program to the normal budget process is at least a positive beginning toward ensuring that the Commission's work receives much needed support.

ELECTRONIC RECORDS

In addition, our fiscal year 1991 request emphasizes an important area which we very much need to address, and that is electronic records. The National Archives is not adequately equipped to handle the responsibilities brought on by the ever-increasing use of various electronic media throughout the Federal Government.

Resources are required to prepare for the numerous electronic technological differences that we encounter in government today.

Specific areas targeted are the transfer of electronic records to the National Archives and improving record availability and preservation. We are working very closely with the National Academy of Public Administration in developing further knowledge and insights into this issue government-wide. Eight hundred forty-eight thousand dollars is requested to support the electronic records program.

OTHER INCREASES

Other important activities are also reflected in the request, including increases of $180,000 to aid in the preservation and conservation of the regional archives' newly accessioned records; $700,000 to prepare for the release of the 1920 population census; $1.7 million for the Franklin D. Roosevelt Library renovations, and $400,000 to move the Reagan Presidential materials to the new library.

By way of clarification, let me briefly highlight the request for census funding and the Roosevelt Library.

1920 POPULATION CENSUS

The release of the 1920 census, scheduled for the spring of 1992, is eagerly being anticipated by the estimated 20,000,000 active genealogists in the United States today, a significant constituency, I think, by anyone's standards.

In order to insure the timely release, the National Archives is requesting $700,000 to copy the approximately 10,600 microfilm rolls, which are needed to supply all 12 regional archives' offices, as well as the Washington, D.C. research room, and to procure adequate storage equipment for those microfilm reels.

ROOSEVELT LIBRARY

The other area I would like to touch on is the Roosevelt Library. The FDR Library is the oldest of the eight Presidential libraries, having been built in 1940. It is in urgent need of repair to the roof and foundation. Furthermore, other improvements need to be made in the ticket sales office, to provide accommodations for handicapped visitors, and for sidewalks and parking lot improvements.

OTHER INCREASES/DECREASES

Other changes include increases of $930,000 for program restorations to offset reductions necessitated to fund that portion of the 1990 grants, for which no funds were provided. Also, $1.5 million for rent rate changes; $618,000 for an increase in the cost of goods and services; $538,000 for the annualization of the 1990 pay raise are requested. These increases are offset by decreases of $4,930,000 for the Herbert Hoover Library and Museum alterations, and $930,000 from the 1990 grants program level.

PAY RAISE ABSORPTION

Finally, I would like to make one brief observation. As the committee is fully aware, federal agencies have been absorbing federal pay raises for several years. The National Archives budget base has eroded by nearly $5,000,000 in the last four years due to this factor alone. Gramm-Rudman sequestration orders have added to that impact.

Like most agencies, the National Archives has found ways to muddle through, albeit with difficulty, because we understand the constraints under which we are all operating.

These cuts do, however, have a strong impact on our core mission. I would just like to say that the outlook for the future, if this continues, is bleak. We would strongly support any effort to bring relief in this area.

Thank you for the opportunity to make a statement, Mr. Chairman. I will be happy to respond to your questions.

Mr. **Roybal**. Thank you, Dr. Wilson.

FY 1991 INCREASE

I would like to come back to the $3,160,000 increase over last year. We do not know what is going to happen, of course, or what our allocation is going to be, but suppose our allocation is not sufficient to be able to grant that $3.1 million? What will happen to your program then?

Dr. **Wilson**. It will cut into some very severe core areas, largely in the area of preservation and in the area of preparing for the move to the new Archives' facility, and in processing those records. I think it would be a difficult cut to absorb, and I think it would go to the heart of the processing of some materials.

Mr. **Roybal**. Which means, then, that all of these things have to be delayed for another year, or two, or more. Is that about correct?

Dr. **Wilson**. That is correct.

RECORDS HOUSED AT ARCHIVES II FACILITY

Mr. **Roybal**. Again, not knowing what is going to happen, we are just speculating at the moment, one of the other things I was interested in was the beautiful building that is being built in Prince Georges County, Maryland.

Dr. **Wilson**. Yes, sir.

Mr. **Roybal**. What records will go to Maryland, and which will stay in Washington? Basically, tell the committee how the Maryland facility will inter-relate with the Washington base.

Dr. **Wilson**. We have formed an advisory committee comprised of historians and constituent users of the National Archives to help us in deciding what records will be transferred to the College Park site. At this point, we are looking at the transfer of records primarily that would include modern military, all audio-visual, cartographic and architectural records, and civilian records including State Department records, where a lot of research is done by scholars, and post-World War II materials that require special treatment and special handling.

The records staying in the D.C. facility would primarily be all textual genealogical records, which are used by nearly 107,000 visitors and researchers a year, who stay for a short time in the sense that they may be in for a convention or a meeting and they drop into the Archives. It would be more difficult for them to get to the College Park site.

The legislative and judicial records would stay at the D.C. facility for immediate access, which we think is very important. Other records remaining include old army records to World War I and all Navy records which are primarily used in genealogical research. So it is roughly a division of moving about 1,000,000 cubic feet at this point to College Park, and 500,000 cubic feet remaining in the Washington, D.C. building.

Mr. **Roybal**. But it does, in fact, divide your operation.

Dr. **Wilson**. It divides the records, but it is divided on a use function. We think it will only minimally affect users in that sense.

Mr. **Roybal**. Does that division result in cost-effectiveness?

Dr. **Wilson**. Yes. It will be a cost-effective move, because all special records and special handling materials will be at the new site, which will be constructed and developed for the modern record.

OPERATIONAL FUNDING OF ARCHIVES II FACILITY

Mr. **Roybal**. I asked that because you made reference to the fact, in your opening statement, that this budget did not include the operation of Maryland, or did you know what the——

Dr. **Wilson**. For funding. Yes.

Mr. **Roybal** [continuing]. Funding was going to be? And that is why I am asking the question. What do you anticipate that would cost to operate that facility.

Dr. **Wilson**. We have engineering studies. Perhaps Jim could address that more adequately at this point.

Mr. **Megronigle**. We are just now working to develop a detailed transition plan that the Office of Management and Budget has requested that will address questions as to what we anticipate the utility costs will be in the new building, the cost to provide security services, operations, and maintenance, and so forth. We really do not have an estimate at this point, but, by next year at this time, we will, Mr. Chairman.

CONSOLIDATION OF RECORDS AT THE ARCHIVES II FACILITY

Dr. **Wilson**. We also, Mr. Chairman, are currently in several facilities around town, at this point, which will be consolidated into the new facility.

Mr. **Skeen**. You are reunifying.

Dr. **Wilson**. We are reunifying a lot of this, and all of the Suitland Records Center. The archival materials at Suitland at the Records Center, will be moved to the new site as well.

Mr. **Roybal**. I think that is an important point to remember, that there are several facilities at the moment to be consolidated in the Maryland building, resulting in only two.

Dr. **Wilson**. That's correct. In two instead of several at this point.

PRESIDENTIAL LIBRARIES

Mr. **Roybal**. Now what about the Presidential libraries? I would like to have you summarize for the committee, what is the purpose of a Presidential library? What is the extent to which they are utilized by the public? Then maybe bring us up to date with regard to President Reagan's library.

Dr. **Wilson**. I would be happy to, sir.

Mr. **Roybal**. Yes, please proceed.

Dr. **Wilson**. The Presidential library system is designed to ensure the preservation and access to the records of the Presidency for a given Administration since Herbert Hoover, and we have facilities for eight Presidents at this point, and the ninth being constructed now.

The use of those runs about 12,000 research visits a year, for access to the materials in a very timely manner. About 1.4 million visitors, the public, currently visit the various Presidential libraries around the country at this point. They put on public programs, they have private support groups which are very active in supporting the publications, conferences, symposia, and academic programs as well.

I personally think they are a great advantage to the American people, and we serve the people throughout the country. They get an understanding of how government works, close to home, and I think it is probably the most economical way. I think GSA studies have shown that, based on years of handling the volume of material from the White House at the end of an Administration.

REAGAN LIBRARY

The Reagan Library is currently being developed in California, near Simi Valley, just north of Los Angeles, about 45 miles. The construction has begun, is proceeding on schedule. They are still planning the opening for February 1991.

We have a project temporarily housed in West LA that is servicing those records, and, I might add, they have been very active recently on servicing those records for various activities going on in the courts and around town.

We are processing that material, and we anticipate opening the material to the public within five months after the library is open, dedicated in February 1991.

LIBRARY ADMISSION FEES

Mr. **Roybal**. Do any of these libraries charge a fee for admission?

Dr. **Wilson**. Yes, sir, they do. The fee varies.

Mr. **Roybal**. Why do they charge a fee for admission, since these are libraries that are built in cooperation, I suppose, with the public sector.

Dr. **Wilson**. That's right.

Mr. **Roybal**. But, nevertheless, built for a specific purpose; that is, to preserve the records of Presidents that should be made available to all who enter. Why a fee?

Dr. **Wilson**. Auxiliary to the basic mission and the legislative mandate of preserving the materials and making them available, is the museum function, which is on public program function activity, and early on the legislation envisioned such an activity of education and allowed for a modest charge. Indeed, that charge is modest compared to many other site activities.

It ranges from $1.00 to $2.50, I believe, depending on the location such as Boston versus Abilene, Kansas, or West Branch, Iowa. It is for the museum. I might point out that any one under 16 is not charged, it is a free admission; and, in most cases, there is a senior citizen discount as well. It is a modest charge that enables the museum operation to update its exhibits without coming back to Congress to ask for appropriations for exhibit funding as well as other types of educational sales and programs.

Mr. **Roybal**. One last thing, Dr. Wilson.

Dr. **Wilson**. Yes, sir.

PRESIDENTIAL LIBRARY STATISTICS

Mr. **Roybal**. Will you please provide for the record a listing of the various Presidential libraries, their location, size and cost. I want to compare that to the Maryland facility. And then the method of financing.

[The information follows:]

PRESIDENTIAL LIBRARIES

The initial construction of libraries are funded through private donations. After libraries are built, they are turned over to the Federal government. Operations are then administered by NARA, funded from annual appropriations. The name, location, size, and cost of each Presidential library is included in the following chart.

Presidential Libraries
(Dollars in Thousands)

Name and Location	Usable Floor Space-Sq. Ft.*	FY 1989 Program Costs	FY 1989 Building Operations Costs	FY 1989 Total Costs
Herbert Hoover West Branch, Iowa	23,801	$643	$373	$1,016
Franklin D. Roosevelt Hyde Park, New York	40,539	661	685	1,346
Harry S. Truman Independence, Missouri	60,865	818	969	1,787
Dwight D. Eisenhower Abilene, Kansas	81,466	765	1,020	1,785
John F. Kennedy Boston, Massachusetts	71,847	1,144	8,256	9,400
Lyndon B. Johnson Austin, Texas	96,981	950	1,233	2,183
Gerald R. Ford Ann Arbor, Michigan (Library) Grand Rapids, Michigan (Museum)	70,791	735	1,076	1,811
Jimmy Carter Atlanta, Georgia	63,475	697	1,000	1,697
Ronald Reagan ** Simi Valley, California	91,193	1,167	868	2,035
Totals	600,958	$7,580	$15,480	$23,060

*Actual square footage based on a FY 1988 survey.

**Library to be completed February 1991.

Dr. Wilson. The ten Presidential libraries are quite small compared to the Maryland facility.

Mr. Roybal. That's what I figured.

Dr. Wilson. Yes.

Mr. Roybal. Mr. Skeen?

Mr. Skeen. Thank you, Mr. Chairman. Dr. Wilson, it is good to see you and the folks with you, again.

LIBRARY ADMISSION FEES

Let's continue the discussion of the Presidential libraries.

Dr. Wilson. Yes.

Mr. Skeen. Those fees that are generated stay with the facility. They do not go to Treasury or anything like that? They are collected and stay for the maintenance, operation, and upkeep of the facility itself?

Dr. Wilson. That's correct. The fees are maintained and deposited in a trust fund for that facility and are then used to maintain exhibits and other public programs involved in funding.

Mr. Skeen. Does the local administrator have the oversight of the funds?

Dr. Wilson. No. The funds are deposited in the National Archives Trust Fund.

Mr. Skeen. In the National Archives.

Dr. Wilson. But they are segregated by facility, and then they are administered locally under rules established by the Trust Fund Board.

LIBRARY REPRODUCTION FEES

Mr. Skeen. There has been some question about the high charges for reproduction at Presidential libraries. Can you give us an idea of what that problem is? We have heard from several people who question the charges. Who determines these charges, and why are they as high as they are?

Dr. Wilson. I sympathize and concur that the charges are high, and I wish we could lower them. We are making every effort to do so. We, by law, have to cover costs. That is part of the Trust Fund legislation.

One way, which I think is feasible to lower the cost, is going to a self-service copier, which we have not been able to do in the past.

Mr. Skeen. What type of copier?

Dr. Wilson. Self-service.

Mr. Skeen. Oh, I see.

Dr. Wilson. Because much of the cost, the rate of 35 cents a page, is the manpower——

Mr. Skeen. It takes the time from somebody else.

Dr. Wilson [continuing]. That is required to provide service to the researcher. Now if we can have a machine in the research room and have a debit card or whatever, 10 or 15 cents might be charged for researchers to make their own copies. Then, I think that we can avoid the increases that we have seen.

The downside of that is the preservation factor and the question of handling that material, which has been, there are those who would argue, dangerous to the material to have researchers handling them directly. I think the studies that we have run, and we are going to continue to run and experiment on an item-by-item basis, does not bear this out. That, in fact, we have gone to self-service in the central research room of the National Archives, and it has worked very well.

Mr. **Skeen**. It has not caused a deterioration?

Dr. **Wilson**. No. Not at all.

Mr. **Skeen**. There ought to be, too, another way of handling those kinds of materials, in a technical sense.

Dr. **Wilson**. Absolutely.

Mr. **Skeen**. You can either reproduce them, and, say, use the reproductions for copies and not use the original documents.

Dr. **Wilson**. We are talking millions of documents.

Mr. **Skeen**. I'm getting myself into a lot of hot water.

Dr. **Wilson**. We would come back to you for a big appropriation to copy. We do not want to do that either.

ARCHIVES II FACILITY

Mr. **Skeen**. We understand that. Of course, you know, with our great brains over here, we can figure out how to spend more money than anybody else. I want to compliment you on the facility. That is a beautiful facility. What are we going to name it?

Dr. **Wilson**. We are now referring to it as National Archives, College Park.

MARYLAND UNIVERSITY COOPERATION CONCERNING ARCHIVES II FACILITY

Mr. **Skeen**. College Park. How is the cooperation with the University of Maryland?

Dr. **Wilson**. It has been wonderful.

Mr. **Skeen**. Evidently it is.

Dr. **Wilson**. It has been working extremely well. I was out to the site just yesterday, and I hope the committee and subcommittee may have a chance next year, once we start to see the footprint, because it is truly impressive. You can look at models, you can look at the plans, but until you are physically there, it is unbelievable to see it.

In the process, we were discussing the fact that we have had tremendous cooperation with the University of Maryland, on the site. Both sides are very excited about the potential. We have formed a committee, a liaison group—what do we call it, Jim? The formal name?

Mr. **Megronigle**. Archival Research Coordinating Committee.

Mr. **Skeen**. Archival?

Dr. **Wilson**. Archival Research Coordinating Committee, with four representatives from each facility, and the chairmanship alternates, and they determine a lot of the program cooperation activities, and that has worked extremely well, in fact. We are very pleased.

ELECTRONIC RECORDS

Mr. **Skeen**. On archiving these electronic records, any particular or unique technological problems handling these documents, as far as the maintenance of them, and classifying and so forth?

Dr. **Wilson**. The range of issues is just staggering.

Mr. **Skeen**. It is a whole new concept.

Dr. **Wilson**. It is a whole new concept. We have to rethink and evaluate how we would handle this material. We have, I think, taken very positive steps in doing so. We have set up a Center for Electronic Records. To highlight that program, we attracted some very highly skilled individuals, with both archival and electronic records background. To head that, Dr. Ken Thibodeaux is the new director of that center.

Mr. **Skeen**. Sounds like somebody from Louisiana.

Dr. **Wilson**. I do not know where he's from originally, but we got him from NIH.

We are making strides. The biggest problem is the whole range of electronic equipment out there. Complicating that is the complete diversification in going to the PC, which Congress is even doing, the separate stations, and then trying to develop the kind of standards that are going to insure that a record of importance is kept.

We have had indications that we have about an eight- or ten-year window of opportunity, where we are not going to a paperless society. On the contrary, we have more paper than ever because of computers at this point. But, over time, there are going to be certain kinds of records that will be kept in electronic form only. That is what we have to be very concerned about.

I don't think we are going to lose policy materials, at least in this generation. People are still used to the paper.

Mr. **Skeen**. Just the art of classifying these.

Dr. **Wilson**. That's right. Then there is the whole question of how do you access them then, in getting them transferred? We have doubled the amount of material brought into the National Archives just in the last year, in terms of electronic records, and we see that continuing.

Mr. **Skeen**. Don't you worry. These paper generators are way ahead of you.

In that connection, then, the costs are extremely high in the preliminary work until we get this thing settled and put to bed, so that you have a system that you know is effective and one that does what you want it to do.

Dr. **Wilson**. That's correct, Congressman. We are still dealing with some unknowns out there until we get——

Mr. **Skeen**. And know what they are costing.

Dr. **Wilson** [continuing]. A handle on it. The cost of the equipment is going down. It is a small beginning that we are making, but I think we are going to set a very good example, and we can then transport that to the agencies in terms of how they bring the records in and identify the small quantity. And I am talking a very small quantity of permanent records.

One of the big issues that we have to deal with, though, is the whole question of satellite transmissions, the data that are being generated in NASA, in the weather systems in NOAA, and others. What do we keep? And we don't have the expertise. We have to develop some guidelines and keep the expertise there to say what has to be kept and how quickly it has to be transported. But we are talking about megabytes of information per second on some of those systems.

One of the recommendations I have strongly made to the agencies, and one that I continue to pursue, is the issue of when they develop these systems, and they know they are going to generate a tremendous amount of information, why don't they build in one percent in the beginning for handling that data later, rather than coming back and sending millions.

Mr. **Skeen**. Yes. How do you go back?

Dr. **Wilson**. Yes. How do we go back and clean it up.

Mr. **Skeen**. If you retrieve the information.

Dr. **Wilson**. If we had a one percent add-on, that would do a great deal in terms of managing that record from the beginning.

Mr. **Skeen**. I think that that would be something that you would work with every agency that generates some kind of paper.

Dr. **Wilson**. We have several inter-agency task forces set up.

Mr. **Skeen**. That also would require that you go outside of your own group to find information that you need about what is significant and you want to keep.

Dr. **Wilson**. That's correct.

Mr. **Skeen**. Thank you very much for your responses. Thank you.

WORLD WAR II COMMEMORATION

Dr. **Wilson**. If I might, I have one further thing, because both of you, I think, are members of this World War II commemorative effort that we have undertaken, and we just had the new stationery printed. You'll recognize the ribbon.

[Letterhead follows:]

World War II
1941 - 1945
National Archives
Commemorative Committee

Honorary Co-Chairmen
Senator Robert J. Dole
Senator Daniel K. Inouye
Representative Charles E. Bennett
Representative Robert H. Michel

United States Senate
Brock Adams
Lloyd Bentsen
Dale L. Bumpers
John H. Chafee
Alan Cranston
Alan J. Dixon
J. James Exon
Wendell H. Ford
John Glenn
Mark O. Hatfield
Howell Heflin
Jesse A. Helms
Ernest F. Hollings
Frank R. Lautenberg
Spark M. Matsunaga
James A. McClure
Daniel P. Moynihan
Claiborne Pell
William V. Roth, Jr.
Terry Sanford
Ted Stevens
Strom Thurmond
John W. Warner

House of Representatives
Daniel K. Akaka
Glenn M. Anderson
Cass Ballenger
Doug Barnard
Tom Bevill
Jack Brooks
William S. Broomfield
George E. Brown, Jr.
James McClure Clarke
Silvio O. Conte
E. (Kika) de la Garza
William L. Dickinson
John D. Dingell
Bernard J. Dwyer
Don Edwards
Dante B. Fascell
Hamilton Fish, Jr.
William D. Ford
Sam M. Gibbons
Benjamin A. Gilman
Frank J. Guarini
Ralph M. Hall
John Paul Hammerschmidt
Frank Horton
Earl Hutto
Henry J. Hyde
Robert W. Kastenmeier
Joe Kolter
Robert J. Lagomarsino
Alfred A. McCandless
John Joseph Moakley
G. V. (Sonny) Montgomery
Carlos J. Moorhead
Austin J. Murphy
John T. Myers
William H. Natcher
Jim Olin
J. J. Pickle
Arthur Ravenel, Jr.
Richard B. Ray
Ralph Regula
Robert A. Roe
J. Roy Rowland
Edward R. Roybal
James H. Scheuer
Norman Sisisky
Joe Skeen
D. French Slaughter, Jr.
Neal Smith
Louis Stokes
Bob Stump
Morris K. Udall
Tim Valentine
Chalmers P. Wylie
Sidney R. Yates

7th & Pennsylvania Avenue, NW
Washington, DC 20408
(202) 523-3134

We are very excited about the World War II commemoration activities, and we have gotten good inter-agency cooperation, including the White House, and we are now getting Department of Defense coordination, and I think it's going to come together, so it's not just an isolated little celebration in the commemoration year, but a viable program.

Mr. ROYBAL. Very good. That's excellent.

PRESERVATION

There is one last thing I want to ask you, and that is because of my interest in the preservation of old records.

Dr. WILSON. Yes, sir.

Mr. ROYBAL. Is deterioration still a major problem?

Dr. WILSON. Yes. Deterioration is a major problem, and one which we are handling in several ways. I have recently testified on permanent paper acidity. What is a major concern is the acid content of the papers, and it is a very expensive process to deacidify, although we are working jointly with the Library of Congress and other agencies in terms of mass deacidification, which will go a long way in keeping further deterioration from a lot of these records, if we can come up with a solution.

We are continuing to develop our preservation operations, and I think it would not be boastful for me to say that we probably have the finest paper conservation lab in the world, and the finest people in that lab, and I think through this committee's support, we have been able to develop it, and insure that.

We are looking at new ways of enhancing images where we can restore the information from faded documents. Of course, with the new facility, we will have state of the art labs and conservation facilities.

I did point out, and I would reiterate my testimony, about three weeks ago, on permanent paper, because of OMB and other cost-cutting guidelines adopted during World War II, if we were to save all of the World War II records and treat them and preserve them, we would probably be looking at a $71 million price tag, just for World War II records. We have to look at ways of doing this on an en masse basis, and I think that technology is assisting us, but we are going to have to stay alert.

Mr. ROYBAL. The knowledge that one would get from all of that in the future would be worth the money, don't you think?

Dr. WILSON. Absolutely. I would not be sitting here if I did not believe that firmly, sir.

Mr. SKEEN. That's the whole reason, the trade, as they say, for being here.

Mr. ROYBAL. Sure. The thing is, we are having problems even getting $2 million, and we are talking about $70 million, which, in my opinion, the time should come when we can make that available so that these records can be preserved. This is important, I think, not just to your organization, it is important to the country and to the world.

Dr. WILSON. It is important to the nation. I firmly believe with all that is going on in the world today, there can be no stronger case made for archives than what is happening in Eastern Europe. The accountability factor alone of what the government did, why they did it, and for what, and the whole issue of access and accountability of government is what brought down, I believe, that form of government in Eastern Europe and the Soviet Union, and what insures that democracy works for us, and the National Archives is a key to that.

Mr. **Roybal**. It is my hope that what is happening in Europe will make them realize that we can change priorities, and that we can address ourselves to some of the problems at hand, and this is one of them.

Dr. **Wilson**. Thank you, sir.

Mr. **Roybal**. Mr. Wilson, may I thank you and your colleagues for your testimony?

Dr. **Wilson**. Yes.

HISPANIC HISTORY DOCUMENTATION

Mr. **Skeen**. May I ask just one more question?

Dr. **Wilson**. Yes.

Mr. **Skeen**. We mentioned something about the Hispanic history in the southwest and documentation, and I am sure that that involves a great deal of cooperation with the state organizations.

Dr. **Wilson**. Yes, it does.

Mr. **Skeen**. How has that been working? I have a very avid interest in New Mexico, and Texas, and Arizona.

Dr. **Wilson**. Yes. And we believe that we have a very strong outreach program and cooperation with the states in the area of electronic records. For example, we are working very closely with states. In the area of documentary publications through the NHPRC, we have funded a number of the state programs.

Mr. **Skeen**. Do you have acquisition ability from Spain, any kind of a cooperative agreement on documentation from Spain?

Dr. **Wilson**. There is nothing in writing. I mean, there is nothing formal, but we have been working with them, and it usually centers around celebrations or commemorations or activities. The Christopher Columbus area, for example, we are working closely with Spain, in terms of documenting a lot of it, and that impacts the southwest documentation as well.

Texas, I know, has a very active program in exchange of records and land records, for example. And a lot of ours in California, Texas, and New Mexico are overlapped.

Mr. **Skeen**. A lot of scholars from our part of the country do writings on the southwest Hispanic history. If you have to travel to Spain, I just wondered if there was any kind of a cooperative program that goes on between our archives, or as far as national program.

Dr. **Wilson**. We do. In terms of the International Congress of Archivists, I sit on the Executive Committee, and there is a great deal of exchange there, but usually, by the time issues are brought to our attention, they are usually on these one-on-one commemoration celebration activities, but it is something that we continue to pursue, and we do a lot of interchange, particularly with the Spanish and the Mexican governments. Their archival programs are improving, as well.

Mr. **Skeen**. Are they?

Dr. **Wilson**. Very much so.

Mr. **Skeen**. Thank you.

ARCHIVES II FACILITY

Mr. **Roybal**. Mr. Wilson, Mr. Hoyer has some questions that he would like to include for the record. I would appreciate it if you would answer them. They, of course, have to do with Archives II.

Dr. **Wilson**. Oh, I am sure there are other areas of interest, too.

Mr. **Roybal**. Yes.

Dr. **Wilson**. Yes, we will include those and submit those for the record.

[Questions and answers follow:]

QUESTIONS SUBMITTED BY MR. HOYER

ARCHIVES II

Mr. Hoyer: How is the Archives II project financed?

Dr. Wilson: The project was financed through the public sale of certificates of participation secured by an Installment Sale and Trust Agreement between the National Archives and the United States Trust Company of New York. This is a 30 year contract for the purchase of the building. U.S. Trust has designated the National Archives as its agent to build the building which gives the Archives the necessary control to ensure that our special building requirements are met. The installment payments begin in FY 1994 when the building is completed at the rate of about $29 million per year for 26 years. The interest rate is 8-1/2 percent.

Mr. Hoyer: Will any money leave the Treasury in FY 1991 for the building?

Dr. Wilson: No, the proceeds from the sale of the certificates are held by the U.S. Trust Company of New York. U.S. Trust will make the interest payments to certificate holders, and disburse funds to pay construction costs based on direction from the National Archives. All transactions occur outside of the U.S. Treasury.

Mr. Hoyer: When and how will funds from the Treasury be required, and when will they have to appear in your budget?

Dr. Wilson: The National Archives will require appropriations in FY 1994 to begin to make installment payments. The estimated annual payment of $29 million will be in addition to our normal budget request.

Mr. Hoyer: Why does the budget propose to score $108 million against the subcommittee this year?

Dr. Wilson: The Office of Management and Budget considers the Archives II installment sale contract to be defacto Federal borrowing. Therefore, the amount borrowed, $301,702,000 is shown in the FY 1989 column because that is when the contract with U.S. Trust was signed, and the estimated expenditures to be made in FY 1990 and 1991 to pay interest to certificate holders and the costs of construction are shown as outlays. Since the funds are not in the U.S. Treasury nor will they be disbursed from the U.S. Treasury, these "outlays" will not show up on the Federal government's books unless we are required to begin some type of manual report to OMB indicating how much U.S. Trust has paid out on behalf of the project.

Mr. Hoyer: How does the funding compare with your existing leased space costs, and other construction projects the government is undertaking?

Dr. Wilson: The annual cost to amortize the loan will be $17.04 per square foot ($28,971,000 divided by 1,700,000 square feet). Even though there will be additional costs to operate the building, this basic cost to acquire the space will remain constant over the 26 year payback period making this far more advantageous than leasing of comparable space. This is equal to or less than the cost of other government projects.

Mr. Hoyer: How is the construction project going? Have there been any problems or complaints from citizens?

Dr. Wilson: We have nearly completed the clearing and grading of the site and are ready to begin construction of the garage next month. So far, the traffic pattern we have employed for the truck traffic has minimized the impact on the local roads. The one serious complaint we have received about trucks speeding at a very early hour turned out not to be Archives' project trucks. Our construction manager, Gilbane Building Company, has responded quickly to community questions and concerns in an effort to make the project as least disruptive as possible. We intend to keep our community liaison group informed as the project progresses.

Mr. Roybal. I again would like to thank you and your colleague for your testimony.

Ms. Weiher. Thank you.

Mr. Megronigle. Thank you.

[Questions and answers for the record and the justification follow:]

QUESTIONS SUBMITTED BY MR. AKAKA

ELECTRONIC RECORDS

Mr. Akaka: NARA is seeking to enhance their ability to store electronic records. It is essential that the Archives possess the technology necessary to collect and administer these records. In your statement you mention two specific target areas: the transfer of electronic records to NARA and improvement in record availability and preservation.

Has the Center for Electronic Archives come up with a strategic plan for record keeping and management?

Dr. Wilson: NARA is working to develop and implement plans for meeting the challenges posed by electronic record keeping. In May 1989, the Director of the National Archives Center for Electronic Records presented an analysis of strategic issues and opportunities facing this agency in the area of electronic records. Based on this analysis, it was determined that the most appropriate course of action for NARA in the next few years is to develop a model archival program for electronic records internally in the Center for Electronic Records. Such a model program will give us a more solid base for dealing successfully with broader issues related to electronic records.

The Center has developed a strategic plan for accessioning, preserving, managing and providing access to broad categories of electronic records, and it is in the process of implementing an action plan for one broad category, data files and data bases. The Center is also testing a strategy to increase the volume and promptness of transfer of electronic records from agencies to the National Archives. In other areas, the Center is making progress toward meeting the strategic objectives in the plan.

We are making steady progress while proceeding carefully, in order to ensure that our approach meets the rapidly changing technology.

Mr. Akaka: What are the key elements of this plan?

Dr. Wilson: The external objectives of the plan are to foster the cooperation of other agencies of the Federal Government in achieving the strategic goals of NARA, become a leader and model for other archival institutions, and improve reference service.

The internal objectives are to establish long-term objectives for archival electronic records, assure a high level of coordination, establish immediate basic objectives

for electronic records, and establish immediate objectives for specific archival functions.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

Mr. Akaka: Your FY91 request for $4 million for the National Historical Publications and Records Commission (NHPRC) is $1 million less than the amount appropriated for FY90.

How will this reduction affect the work carried on by the Commission?

Dr. Wilson: The reduction in funds will cause the Commission's support to ongoing projects to be reduced by approximately 20 percent, forcing decisions either to drop one-fifth of the projects or to reduce support across the board.

Either option will reduce activity of documentary editing projects and postpone or eliminate entirely the prospect of publication of these valuable historical materials. Also, it will lead to the dismantling of productive editorial staffs.

Funds reduction will cause reduced support for projects to preserve records, develop archival and records programs, and address critical preservation, access, and standards issues resulting from the use of electronic record-keeping systems.

The reduction will also delay or eliminate action at the state and local levels to preserve and provide access to public records and other documents used for historical, legal, economic, government, and other research.

Mr. Akaka: Do you foresee any reduction in the number of Commission grants to historical and archival projects?

Dr. Wilson: The funds reduction could force us to drop one-fifth of the projects if we do not reduce support across the board.

Mr. Akaka: What success have you had in raising private contributions for funding the Commission?

Dr. Wilson: The Commission mounted a vigorous effort to increase private contributions, achieving some positive, but limited, results. Commission staff members visit presidents of universities to encourage greater institutional commitment and help project editors to solicit private funding. Since the fundraising drive began in 1980, Commission-supported publications projects have raised approximately $5.2 million from foundations and other private donors.

Most foundation officials, however, are frankly skeptical about the possibility of the private sector replacing Federal support in this area. With the rapidly escalating demands on the resources of most charitable organizations, the field of documentary editing does not occupy a position of high priority. Also, foundation officials have indicated that ongoing projects cannot expect private philanthropy to supply total support for staff salaries and operating costs. In the words of Robert Payton, former president of the Exxon Education Foundation, "charity and philanthropy operate at the margins. They cannot address base budget problems."

Mr. Akaka: What percentage of—the Commission budget comes from private contributions and reprogramming?

Dr. Wilson: The entire Commission budget is funded through Congressional appropriations. However, the grant funds are used to leverage support for editorial and records preservation projects from foundations and other public and private institutions. A recent study of completed grant projects indicates an average non-Federal contribution of 53 percent of total project costs, leaving 47 percent funded by NHPRC grants. Without the incentive provided by the grant program there is a likelihood that many of these other resources would dry up. The FY 1990 NARA appropriation included an allocation of $4,930,000 for the grants program; 19 percent of this, or $930,000, had to be reprogrammed, or absorbed, from total Archives' operating expenses.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

1985

CONGRESSIONAL JUSTIFICATION

ESTIMATES OF APPROPRIATIONS FOR FISCAL YEAR 1991

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1991 CONGRESSIONAL JUSTIFICATION

Table of Contents

Page Number

SUMMARY OF 1991 BUDGET:

- Changes in 1990 and 1991 Budget Request 1
- Program by Activities 2
- Highlights of 1991 Budget Request 3

OPERATING EXPENSES, DIRECT:

- Analysis of Authorized Level for 1991 4
- Summary Justification of 1991 Budget Estimate 5
- Summary Explanation of Changes Requested for 1991 6
- Distribution by Object Class 7
- Explanation of Distribution by Object Class 8
- Budget Activities:
  - Records Centers 9
  - Archives and Related Services 12
  - National Historical Publications and Records Commission 17
  - Archives II Financing 18
  - Program Direction 19
- Workload Factors 21
- Summary of Employment 22
- Space Costs as a Proportion of Direct NARA Budget 23
- Consulting Services 24
- Appropriation Language 25

ADVANCES AND REIMBURSEMENTS:

- Analysis of Authorized Level for 1991 26
- Summary Explanation of Changes from 1990 to 1991 27
- Distribution of by Object Class 28
- Explanation of Distribution by Object Class 29
- Major Reimbursable Customers 1991 30
- Workload Factors 31
- Summary of Employment 32

GIFT FUND 33

TRUST FUND 35

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
CHANGES IN 1990 AND 1991 BUDGET REQUEST
(dollars in thousands)

	Amount	FTE
Level Authorized by Public Law 101-136 for 1990	$126,612	2,037
Adjustments		
Reduction Pursuant to Public Law 101-239	-1,772	-
FTE	-	-18
Revised 1990 Funds Available	$124,840	2,019
Increases/Decreases from 1990 to 1991		
Program Changes		
Electronic Records	848	8
1920 Decennial Population Census	700	5
Preservation	180	5
Program Restorations	930	-
Reagan Materials Relocation	400	-
Grants	-930	-
Other Changes		
Roosevelt Library Alterations	1,700	-
Rent Rate Changes	1,502	-
Goods and Services	618	-
Operation and Maintenance - NARA Building and Libraries	1,604	-
Pay Raise Annualization	538	-
Hoover Library Alterations	-4,930	-
Total 1991 Request	$128,000	2,037

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

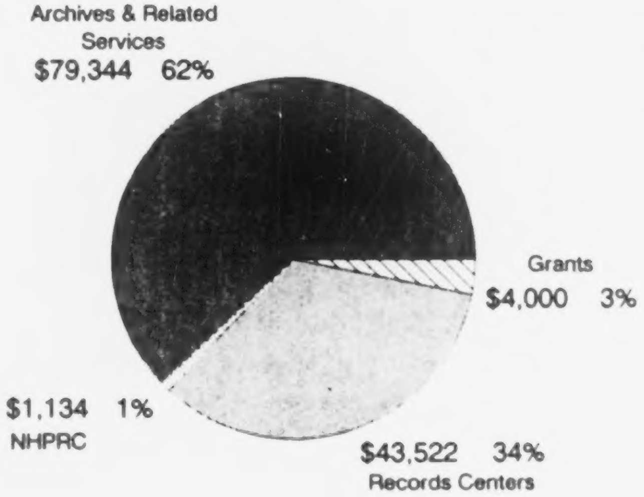
PROGRAM BY ACTIVITIES
(dollars in thousands)

	1989 Actual	1991 Budget Appendix 1990 Estimate	Less Carryover	Adjusted 1/ 1990 Estimate	1991 Estimate	Changes 1990 to 1991
Records Centers	$ 40,343	$ 41,855	$ --	$ 41,855	$ 43,522	$+1,667
Archives and Related Services	86,266	78,716	-1,764	76,952	79,344	+2,392
National Historical Publications and Records Commission	5,248	6,284	-251	6,033	5,134	-899
Archives II Facility	301,702	--	--	--	--	--
Total Obligations	$433,559	$126,855	-2,015	$124,840	$128,000	$+3,160
Unobligated Balance Available, Beginning of Year	-12,824	-2,015	+2,015	--	--	--
Unobligated Balance Available, End of Year	2,015	--	--	--	--	--
Unobligated Balance Lapsing	852	--	--	--	--	--
Appropriation (Adjusted)	$423,602	$124,840	$ --	$124,840	$128,000	$+3,160
Total Compensable Workyears	1,751	2,019	--	2,019	2,037	+18

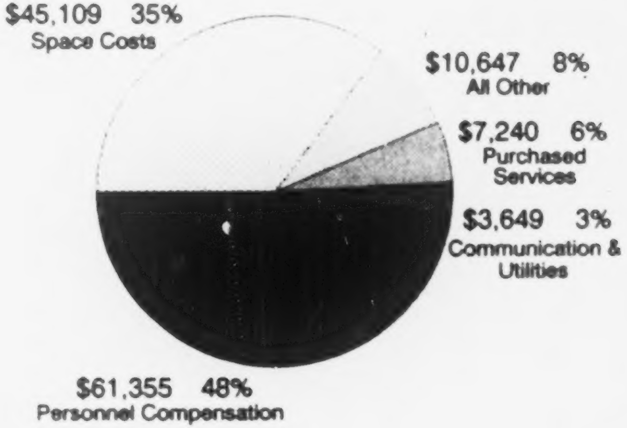
1/ Excludes carryover of 1989 funds of $2,015,000, including $251,000 for grants and $1,764,000 for the Kennedy Library alterations.

National Archives and Records Administration

Highlights of 1991 Request
($ In Thousands)



1991 Request
Costs by Program Area



1991 Request
by Major Cost Element

Total: $128,000

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Expenses (Direct)

ANALYSIS OF AUTHORIZED LEVEL FOR 1991
(dollars in thousands)

	Permanent Positions	Work-years	Amount
Level Authorized by Public Law 101-136	1,736	2,037	$126,612
Reduction pursuant to Public Law 101-239	-	-	-1,772
Reimburseable FTE Adjustment	-69	-18	-
Revised 1990	1,667	2,019	$124,840
Estimates 1991	1,685	2,037	128,000
Changes from 1990 to 1991	+18	+18	$ +3,160

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR 1991
(dollars in thousands)

Activity	Appropriation						Increases or Decreases (-) for 1991					
	1989 Actual		1990 Estimate 1/		1991 Estimate		Total Changes		Program Changes		Other Changes	
	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
1. Records Centers	692	$ 40,343	831	$ 41,855	831	$ 43,522	-	$1,667	-	$ 605	-	$1,262
2. Archives and Related Services												
a. National Archives	656	52,021	746	43,440	764	47,021	18	3,581	18	1,910	-	1,671
b. Presidential Libraries	221	28,011	256	26,557	256	25,169	-	-1,388	-	651	-	-2,039
c. Federal Register	76	4,456	86	4,709	86	4,863	-	154	-	57	-	97
d. Records Declassification	52	1,778	81	2,246	81	2,291	-	45	-	22	-	23
Subtotal	1,043	86,266	1,169	76,952	1,187	79,344	18	2,392	18	2,640	-	-248
3. Nat'l Historical Publ & Records Commission												
a. Grants	-	4,180		4,930		4,000	-	-930	-	-930	-	-
b. Admin. & Reference Services	16	1,068	19	1,103	19	1,134	-	31	-	13	-	18
Subtotal	16	5,248	19	6,033	19	5,134	-	-899	-	-917	-	18
4. Archives II Facility 2/		301,702		-	-	-	-	-	-	-	-	-
Total Obligations	1,751	$431,559	2,019	$124,840	2,037	$128,000	18	$3,160	18	$2,128	-	$1,032
Permanent Positions	1,541		1,667		1,685		18		18		-	

1/ 1990 excludes carryover of 1989 funds of $2,015,000

2/ See explanation of Archives II facility financing on page 18

Note: See each activity for prorated amount of program direction

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

SUMMARY JUSTIFICATION OF 1991 BUDGET ESTIMATE

Direct obligational authority for 1991 is $128,000,000, a net increase of $3,160,000 over 1990. Requested program increases include $848,000 for the electronic records program; $700,000 for preparation for the 1920 population census release; $180,000 for the preservation program; $930,000 for program restorations to offset the reductions necessitated to fund the grant program in 1990; and $400,000 for the relocation of Reagan materials to the permanent library site. Other increases include $1,700,000 for the Roosevelt Library renovation; $1,502,000 for rent rate changes; $618,000 for the increased cost of goods and services; $1,604,000 for operation and maintenance costs for the National Archives Building and Presidential libraries; and $538,000 in pay annualization for the 1990 pay raise. These increases are offset by decreases of $930,000 in the grants program and $4,930,000 for the Hoover Library addition.

AL ARCHIVES AND RECORDS ADMINISTRATION
rating Expenses (Direct)

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR 1991
(dollars in thousands)

Changes	Records Centers Activity 1		Archives and Related Services Activity 2		Nat'l Hist Pub & Records Commission Activity 3		Totals	
	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
PROGRAM CHANGES								
Increases								
A Electronic Records	-	$ -	8	$ 848	-	$ -	8	$ 848
B 1920 Population Census	-	-	5	700	-	-	5	700
C Preservation	-	-	5	180	-	-	5	180
D Program Restorations	-	405	-	512	-	13	-	930
E Reagan Materials Relocation	-	-	-	400	-	-	-	400
Increases	-	405	18	2,640	-	13	18	3,058
Decreases								
A Grants Program	-	-	-	-	-	-930	-	-930
Decreases	-	-	-	-	-	-930	-	-930
Total Program Changes	-	405	18	2,640	-	-917	18	2,128
OTHER CHANGES								
Increases								
A Roosevelt Lib Alterations	-	-	-	1,700	-	-	-	1,700
B Rent Rate Changes	-	1,004	-	498	-	-	-	1,502
C Goods and Services	-	94	-	517	-	7	-	618
D Operation & Maintenance NARA Bldg & Libraries	-	-	-	1,600	-	4	-	1,604
E Pay Raise Annualization	-	164	-	367	-	7	-	538
Increases	-	1,262	-	4,682	-	18	-	5,962
Decreases								
A Hoover Library Alterations			-	-4,930	-	-	-	-4,930
Decreases			-	-4,930	-	-	-	-4,930
Total Other Changes		1,262		-248		18	-	1,032
Total Increases/Decreases Compared to 1990		$1,667	18	$2,392	-	$-899	18	$3,160

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

DISTRIBUTION BY OBJECT CLASS

(dollars in thousands)

	Object Classification	1989 Actual	1990 Estimate	1991 Estimate
11 1	Full-time Permanent	$ 43,507	$ 46,164	$ 47,402
11 3	Other than Full-time Permanent	3,254	3,550	3,645
11 5	Other Personnel Compensation	1,086	1,015	1,042
11 9	Total Personnel Compensation	47,847	50,729	52,089
12 1	Civilian Personnel Benefits	8,388	9,024	9,266
21 0	Travel and Transportation of Persons	396	695	718
21 0	Motor Pool Travel	76	80	82
22 0	Transportation of Things	707	218	225
23 1	Rental Payments to GSA	22,889	24,365	25,867
23 3	Communications, Utilities and Miscellaneous Charges	3,953	3,532	3,649
24 0	Printing and Reproduction	1,795	1,860	1,921
25 0	Other Services	36,768	25,825	26,482
26 0	Supplies and Materials	2,648	2,743	2,834
31 0	Equipment	1,695	605	625
32 0	Land and Structures	302,182	200	207
41 0	Grants, Subsidies, and Contributions	4,180	4,930	4,000
42 0	Insurance Claims and Indemnities	33	34	35
43 0	Interest and Dividends	2	--	--
99 0	Total Obligations	$433,559	$124,840	$128,000

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

11 Personnel Compensation - $52,089,000 For 2,037 workyears

12 Personnel Benefits - $9,266,000 Total benefits include $2,659,000 for direct contribution to the CSRS retirement fund; $2,437,000 for health benefits; $102,000 for group life insurance; $788,000 for FICA and for medicare hospital insurance; $315,000 for employees compensation; $2,363,000 for FERS; $269,000 for thrift savings plan and $333,000 for moving allowances.

21 Travel and Transportation of Persons - $800,000 Provides $718,000 for travel required to conduct activities of the Archives, and $82,000 for motor pool services.

22 Transportation of Things - $225,000 Provides $225,000 for accessioning and transfer of records, supplies and equipment, and relocations for permanent change of station by commercial carrier.

23.1 Rental Payments to GSA - $25,867,000 For payment to the Federal Buildings Fund for space rental.

23.3 Communications, Utilities and Miscellaneous Charges - $3,649,000 Includes $107,000 for equipment rental, $641,000 for communications services, including FTS and local telephone charges; $1,367,000 for postage and UPS costs, and $1,534,000 for utilities to operate the National Archives building and the Presidential Libraries.

24 Printing and Reproduction - $1,921,000 For printing of Federal Register publications by GPO, document containers labels, archival inventories, finding aids, and administrative instructional materials. Includes printing for records centers operation and for reproducing handbooks, reports and regulations.

25 Other Services - $26,482,000 Includes $6,298,000 for other contractual services; $965,000 for payments to GSA and other government agencies for accounting, payroll, and other services; $400,000 for contractual services associated with the Reagan materials relocation; $15,178,000 for operation and maintenance of the National Archives Building and the Presidential Libraries; $1,700,000 for repairs and alterations at the Roosevelt Library; $698,000 for preservation contractual services; $830,000 for payment to the Federal Buildings Fund for recurring reimbursable services; and $413,000 for productivity studies.

26 Supplies and Materials - $2,834,000. Includes $1,960,000 for program supplies including cardboard document containers, records repair and encapsulation supplies, and exhibit supplies for the National Archives, Records Centers and Presidential Libraries; $349,000 for administrative supplies and materials, and an increase of $525,000 for supplies for work on the 1920 Census.

31 Equipment - $625,000. Total equipment costs include $212,000 for administrative equipment, $276,000 for ADP equipment, $71,000 for program equipment, and $66,000 for preservation equipment.

32 Land and Structures - $207,000. Provides for preservation map cabinets, shelving, and microfilm storage cabinets for the 1920 Census Project.

41 Grants, Subsidies and Contributions - $4,000,000. For the grants activity.

42 Insurance Claims and Indemnities - $35,000 For payment of compensation for injury, damages or losses.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

RECORDS CENTERS
(dollars in thousands)

Activity	Appropriation						Increases or Decreases (-) for 1991					
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes		Program Changes		Other Changes	
	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
Records Centers	640	$36,729	765	$38,065	765	$39,618	-	$1,553	-	$ 337	-	$1,216
Program Direction	52	3,614	66	3,790	66	3,904	-	114	-	68	-	46
Total	692	$40,343	831	$41,855	831	$43,522	-	$1,667	-	$ 405	-	$1,262

BACKGROUND

The records center activity provides for the accessioning, storage, reference service, and disposal of the semi-active and non-current records of Federal agencies through a nationwide system of 14 records centers. Significant savings result from use of low cost records storage and the efficient and timely disposal of non-permanent records.

JUSTIFICATION

A. Highlights

The Federal records center system reduces Federal recordkeeping costs by accessioning, storing in low-cost space, providing reference services, and efficiently disposing of agencies' semi-active and non-current records.

Included in the system is the National Personnel Records Center which provides for the maintenance and reference service on 149 million military and civilian personnel folders.

Responsive reference service is necessary to ensure that agencies can meet their constituents' requests for copies of documents in the Centers' custody (e.g., tax returns and military and civilian service records), and can conduct their business efficiently. Significant savings have been realized through the use of low-cost storage space in records centers resulting in the release of more expensive space in individual agencies. Agency savings of $27.1 million in space and equipment costs were realized for 1989 with anticipated savings of $27.9 million in 1990 and $28.8 million in 1991.

Savings were achieved during 1989 at the National Personnel Records Center in St. Louis, Missouri. Management studies of the Records Reconstruction and Army Reference Branches identified work standard and procedural improvements which resulted in cost avoidances of $231,000, as compared to previous years.

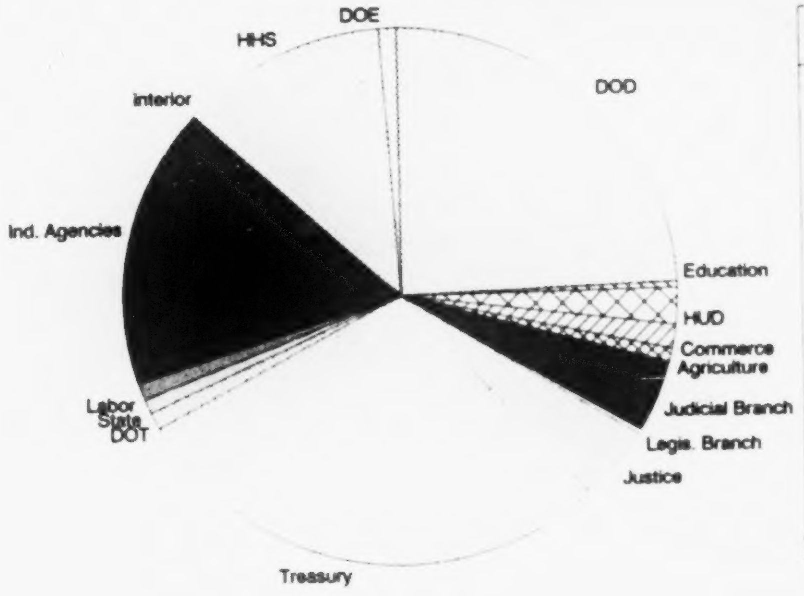
B. Explanation of Changes, 1990 versus 1991

Program Changes. There is an increase of $405,000 for program restorations.

Other Changes. These changes include increases of $1,004,000 for rent rate changes, $94,000 for the increased cost of goods and services, and $164,000 for annualization of the 1990 pay raise.

National Archives and Records Administration

Records Holdings of Federal Records Centers
as of September 30, 1989

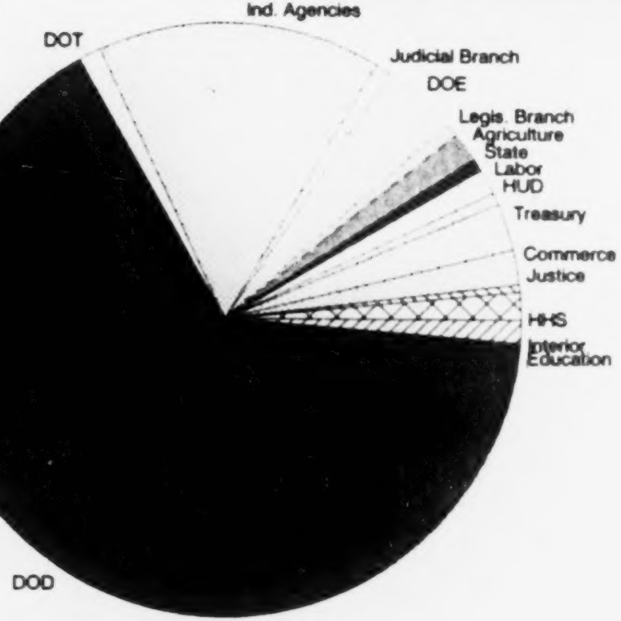


Government Organization	Records Held (Cubic Ft.)	%
Agriculture	130,066	.8
Commerce	234,906	1.4
Defense	4,000,590	24.4
Education	59.909	.4
Energy	170,931	1.1
HHS	1,842,178	11.2
HUD	364,091	2.2
Interior	135,105	.8
Justice	744,250	4.5
Labor	169,784	1.0
State	146,130	.9
Transportation	168,353	1.0
Treasury	4,712,858	28.7
Ind. Agencies	2,777,195	16.9
Legis. Branch	41,954	.3
Judicial Branch	715,134	4.4

Total: 16,413,434

National Archives and Records Administration

Agency Holdings Not Scheduled for Disposal
In Federal Records Centers



Government Organization	Amt. Held (Cubic Ft.)	%
Agriculture	7,152	1.6
Commerce	18,028	4.1
Defense	285,728	65.5
Education	541	.1
Energy	5,282	1.2
HHS	6,564	1.5
HUD	2,914	.7
Interior	5,497	1.3
Justice	1,832	.4
Labor	6,004	1.4
State	3,015	.7
Transportation	8,285	1.9
Treasury	11,137	2.6
Ind. Agencies	67,260	15.4
Legis. Branch	3,305	.8
Judicial Branch	3,704	.8

Total: 436,248

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

ARCHIVES AND RELATED SERVICES
(dollars in thousands)

Activity	Appropriation						Increases or Decreases (-) for 1991					
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes		Program Changes		Other Changes	
	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
National Archives	643	$48,500	682	$39,747	700	$43,218	18	$3,471	18	$1,876	-	$1,595
Presidential Libraries	197	26,343	225	24,808	225	23,368	-	-1,440	-	628	-	-2,068
Federal Register	71	4,085	79	4,320	79	4,463	-	143	-	50	-	93
Records Declassification	52	1,778	81	2,246	81	2,291	-	45	-	22	-	23
Subtotal	963	$80,706	1,067	$71,121	1,085	$73,340	18	$2,219	18	$2,576	-	$ -357
Program Direction	80	5,560	102	5,831	102	6,004	-	173	-	64	-	109
Total	1,043	$86,266	1,169	$76,952	1,187	$79,344	18	$2,392	18	$2,640	-	$ -248

BACKGROUND

This activity provides for selecting, preserving, describing, and making available to the general public, scholars, and Federal agencies, the permanently valuable historical records of the Federal government and the historical material in Presidential libraries, related publications and exhibit programs, and the appraisal of all Federal records. It also provides for the publication of the Federal Register and Code of Federal Regulations, the U.S. Statutes at Large, Presidential documents, and for a program to improve the quality of regulations and the public's access to them. It provides for the National Audiovisual Center's audiovisual information and management programs. It also provides for the systematic review of all classified records in the National Archives which are over 30 years old, except intelligence and cryptological materials dated after 1945, which are to be reviewed when 50 years old.

JUSTIFICATION

A. Highlights

1. National Archives - On-site facilities provide the public and Federal agencies access to the historical records of the Federal government. Information regarding these records and their reproduction is provided through the mail and by telephone. The reference service workload is determined by the volume of requests received.

Records are arranged and descriptions of their contents prepared to provide access and facilitate use by staff and researchers. Descriptions of materials are published in guides, inventories, special lists, and other publications. Exhibits provide the public with additional access to the archival holdings.

This program appraises all records of the Federal government for disposition and establishes government type policies, standards, procedures, and regulations to ensure adequate and appropriate documentation of the government's activities. Assistance is provided to Federal agencies to ensure the proper creation, maintenance, use, and disposition of agency records, including the development and implementation of records administration programs, as mandated by statute.

The National Audiovisual Center furnishes to the public and to Federal agencies information about audiovisual materials produced by or for the Federal government. Also, the center assists Federal agencies to improve management of audiovisual materials and monitors their compliance with OMB Circular A-114.

Most of the records of the National Archives, (approximately 1.5 million cubic feet) including over 3.4 billion textual (paper) documents, require some treatment if they are to be preserved for future use. Many of the older papers and non-textual records (e.g., movies, sound recordings, maps, and photographs) require immediate duplication or restoration to preserve the information within their expected remaining life span. Failure to maintain an adequate program will result in the irretrievable loss of data needed for historical and other scholarly research.

Studies conducted in 1983-84 by the National Bureau of Standards (NBS) Center for Applied Mathematics identified conservation needs that will require preservation action over an extended period of time. Based on this research, NARA developed a preservation plan, to be implemented over a twenty year period, that prescribed a systematic course of action to alleviate the current backlog of preservation workload. The annual funding levels required in order to fully implement and support this plan have not been provided. Without this funding, the preservation goals have not been achieved. In light of this, NARA is revising the twenty year preservation plan in an effort to reevaluate experiences with the original plan and to develop economical alternatives to current preservation strategies.

In an effort to refine the process of establishing preservation priorities, NARA contracted with the Department of Transportation's (DOT's) Transportation Systems Center to statistically define reference use patterns of textual holdings. The DOT study will be completed during the Spring of 1990. NARA will estimate workload and review the plan during the Summer of 1990. After that we will determine if additional funds should be requested for preservation of the backlog.

In the meantime, we have other preservation priorities, not addressed in the twenty year preservation plan which must be considered.

The original twenty year preservation plan did not address archives accessions because they were not included in the study. Beginning in 1990 and continuing through 1991, the regional archives are expected to acquire substantial quantities of older records (generally 60 to 110 years old) from substandard agency space. The increase results from renewed efforts to transfer these records to the National Archives. An initiative is included in this budget request supporting the preservation and conservation of these regional archives newly accessioned records.

A request for enhancing our ability to store electronic records is included in this budget submission. Widespread and varying Federal usage of computers, peripherals, and recording media places NARA in a very difficult position in trying to plan for the collection and storage of documents and data. NARA resources are required to prepare for the numerous electronic technological differences it has been and will continue to encounter. Specific areas targeted are the preservation of electronic records, the transfer of electronic records to NARA, and the enhancement of record availability. Also included is funding for the development and usage of data transfer standards, and for ADP hardware/software to support the implementation of the Records Administration Information System, a primary modular system to manage NARA's records.

Funding is required to prepare for the release of the 1920 Decennial Population Census. To prepare for the Spring, 1992 release, approximately 10,600 microfilm rolls (including indexes) must be copied for all eleven NARA regional archives and the Washington, DC research rooms. Microfilm storage cabinets must be provided for these microfilm rolls. These records must be available at all sites in advance to provide adequate time for Archives personnel to properly prepare for the large and immediate surge of researchers, a large percentage (70%) of which are expected to be researching genealogy.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

National Archives Performance Costs
(dollars in thousands)

Activity	1989 Actual	1990 Estimate	1991 Estimate	Change From 1990
Reference services	$ 7,755	$ 8,396	$ 8,774	$+ 378
Description	5,622	5,069	5,298	+ 229
Relocation of records	408	467	1,567	+1,100
Accessions	1,530	2,045	2,138	+ 93
Appraisal	4,574	2,799	3,031	+ 232
Preservation 1/	5,330	7,000	7,180	+ 180
Audiovisual management	298	320	328	+ 8
Exhibits, publications, and education	1,897	2,009	2,078	+ 69
Rent and recurring reimbursable payments to the Federal Building Fund	4,289	5,011	5,686	+ 675
O&M & R&A - NARA building	5,029	4,718	5,068	+ 350
Archives II facility design	10,000	--	--	--
Common distributables	1,768	1,913	2,070	+ 157
Total Performance Costs	$48,500	$39,747	$43,218	$+3,471

1/ Excludes Presidential libraries

2. Presidential Libraries - This program provides for the operation of eight existing Presidential libraries, and the retention and processing of Nixon and Reagan Presidential materials. Manuscripts, books, prints, films, and other historical materials received from former Presidents or acquired from their contemporaries are arranged, described, preserved, and processed for opening. Finding aids are published and the materials are made available for scholarly research and public information. The libraries also undertake solicitation programs to acquire historical materials relating to the President and the Presidency. The Presidential libraries have programs of exhibits, publications, scholarly symposia, conferences, and related activities based upon their holdings. Preservation actions include making preservation copies of presidential films and tapes, conserving museum items, and use of a cost-effective method of preserving color photos.

Funds are included in 1991 for the renovation of the Franklin D. Roosevelt Library. The library was built in 1940 and is the oldest of the eight Presidential libraries. Major repairs are needed to the roof and foundation of the building. The library and the National Park Service now share a ticket sales area which was originally a temporary construction. The renovation will provide more adequate space for ticket sales, accommodations for handicapped visitors, and also upgrading the sidewalk and parking lot areas.

The Reagan Presidential Library is scheduled for opening in February 1991. Funding is included for the move of the Reagan materials to the permanent library site at Simi Valley, California. These funds will be used for packing and transporting records from Southern California, and the audiovisual collection from Washington, DC, to the new library. Other items to be transported include a computer system, office furniture, and equipment. The Reagan materials were relocated to two temporary locations in Southern California in January 1989. The staff is currently processing, arranging, and taking inventory of the records. Reference service is also being provided to the former President and the current Presidential administration. The total volume of Reagan materials is approximately 50,000 cu. ft.

The Automated Processing and Reference System for Historical Materials at the Presidential Libraries (PRESMET), provides automated processing controls and reference service on the holdings of the libraries. Funds are included in 1991 for contracts to modify the PRESMET software for expansion of the system, and also to purchase hardware to begin implementing the system at the libraries which currently do not have the PRESMET system.

Selected library holdings at the close of 1989 were as follows: (000)

Pages of manuscripts	253,678
Volumes	254
Other printed items	470
Still pictures	5,014
Museum objects	281
Motion picture film footage	13,558

Exhibits in Presidential libraries were viewed by 1,339,151 visitors in 1989.

Presidential Libraries Performance Costs
(dollars in thousands)

Activity	1989 Actual	1990 Estimate	1991 Estimate	Change from 1990
Hoover	$ 643	$ 679	$ 697	$+ 18
Roosevelt	661	708	726	+ 18
Truman	818	861	884	+ 23
Eisenhower	765	804	825	+ 21
Kennedy	1,144	1,046	1,073	+ 27
Johnson	950	978	1,004	+ 26
Nixon Pres Materials	827	838	860	+ 22
Ford	735	772	792	+ 20
Carter	697	735	755	+ 20
Reagan Pres Materials	1,167	850	1,277	+ 427
White House Liaison	81	69	71	+ 2
Planning and Direction	1,097	960	1,086	+ 126
Rent and recurring reimbursable payments to the Federal Building Fund	456	1,059	886	- 173
O&M & R&A - NARA building	418	389	400	+ 11
O&M & R&A - libraries	15,435	13,574	11,545	-2,029
Common distributables	449	486	487	+ 1
Total Performance Costs	$26,343	$24,808	$23,368	$-1,440
Preservation included above	($744)	($744)	($744)	

3 Federal Register . This program provides for the editing, compilation, and publication of Federal regulations in the Federal Register and Code of Federal Regulations, laws in slip law form and in the U S Statutes at Large, Presidential documents in the Weekly Compilation of Presidential Documents and Public Papers of the Presidents, a compilation of Privacy Act issuances, and statements of Federal agency organization and functions in the United States Government Manual

The program also provides leadership and assistance to agencies in regulation drafting, assists the public through its finding aids program for all its publications, and conducts educational programs for the public on how to use the Federal Register

4 Records Declassification - The declassification program makes available to the public more historically valuable information in the records of the Federal government and in donated historical materials by declassifying as much information as possible without endangering national security Most of the work is performed in the Washington, DC metropolitan area on records in the National Archives Building and in the Washington National Records Center A very small amount of the total workload is accomplished at the Presidential libraries of recent Presidents The program provides for the systematic review of security classified records which are or will be 30 years old, except for intelligence and cryptological records, the NARA portions of the State Department and the Agency for International Development systematic review projects, the systematic review of the Office of Strategic Services records, and the mandatory review of records requested by researchers, in accordance with procedures established under Executive Order 12356 and the Freedom of Information Act

B Explanation of Changes, 1990 vs 1991

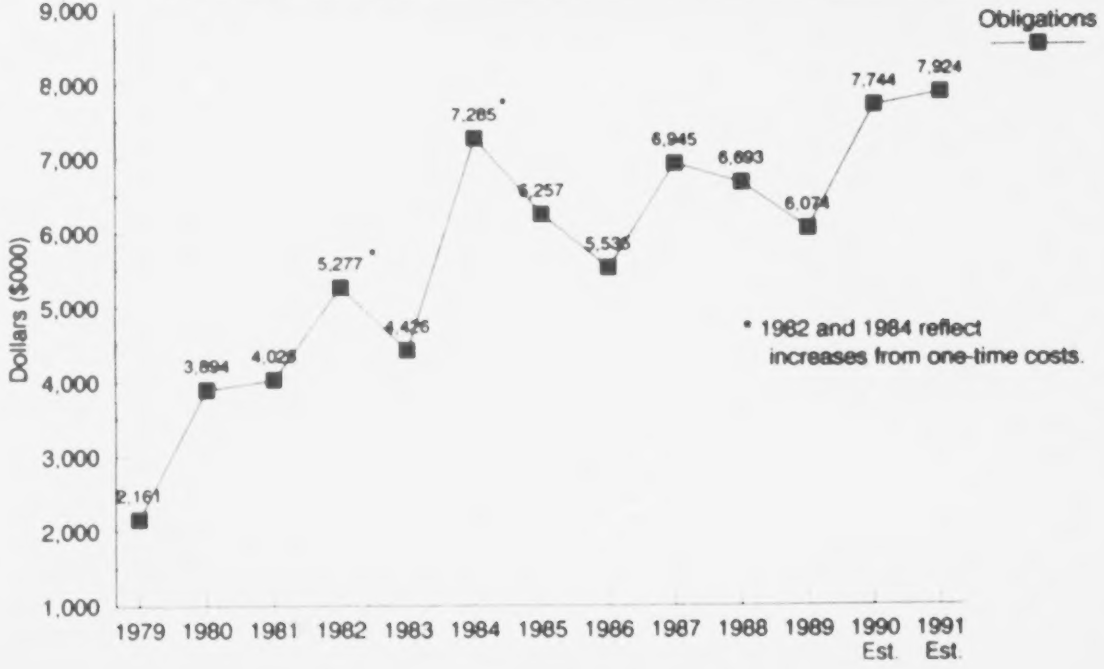
Program Changes The budget request includes $848,000 and 8 FTE to support electronic records. $700,000 and 5 FTE are required to prepare for the release of the 1920 Decennial Population Census, $180,000 and 3 FTE to aid in the preservation and conservation of the regional archives newly accessioned records, $400,000 to move Reagan Presidential materials to the new library, and $512,000 for program restorations

Other Changes These changes include increases of $1,700,000 for alterations to the Roosevelt Library, $498,000 for rent rate changes, $517,000 for the increased cost of goods and services, $1,600,000 for building operation and maintenance, and $367,000 for the annualization of the 1990 pay raise Increases are offset by reductions of $4,930,000 for Hoover Library/Museum alterations

National Archives and Records Administration

Preservation Program Obligations

1979 - 1991



* 1982 and 1984 reflect increases from one-time costs.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION
(dollars in thousands)

Activity	Appropriation						Increases or Decreases (-) for 1991					
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes		Program Changes		Other Changes	
	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
Grants	-	$4,180	-	$4,930	-	$4,000	-	$-930	-	$-930	-	$ -
Administration and Reference Services	15	975	17	1,006	17	1,034	-	28	-	12	-	16
Subtotal	15	5,155	17	5,936	17	5,034	-	-902	-	-918	-	16
Program Direction	1	93	2	97	2	100	-	3	-	1	-	2
Total	16	$5,248	19	$6,033	19	$5,134	-	$-899	-	$-917	-	$18

BACKGROUND

The National Historical Publications and Records Commission reviews and recommends project grants to federal and state governments, and private non-profit institutions, chiefly universities and research libraries. It makes plans, estimates and recommendations for the publication of important historical documents and works with various public and private institutions in collecting, editing, and publishing papers significant to the history of the United States. The Commission is composed of members appointed by and representing the President, Congress, Supreme Court, executive agencies and historical archival societies.

JUSTIFICATION

A. Highlights

The Commission coordinates and provides technical assistance to archival planning and assessment projects in most states and also offers a specialized reference service to federal, state and local, and non-government institutions that are publishing significant portions of records from official government files. The Commission also lends its endorsement and support to those specific projects that further the basic objectives stated in it legislation. Grants provide financial support for the collection, description, preservation, compilation, and publication of documentary sources of American history.

The grants program has been reauthorized through 1993 as a result of P.L. 100-365. This action authorizes funding of $8,000,000 for 1990 and $10,000,000 each year from 1991 through 1993. NARA is requesting an appropriation of $4,000,000 in 1991.

B. Explanation of Changes, 1990 versus 1991

Program Changes. The budget request includes $13,000 for program restorations. The increase is offset by a $930,000 reduction in the grants program.

Other Changes. These changes include increases of $7,000 for the increased cost of goods and services; $4,000 for building operation and maintenance; and $7,000 for annualization of the 1990 pay raise.

ARCHIVES II FINANCING

Background

PL 100-440 (102 Stat. 1743-44), the NARA appropriation section, provided authorization for the construction of Archives II as follows:

> "That notwithstanding the provisions of 31 U.S.C. 1341(a)(1) or any other provision of law, the Archivist of the United States is authorized, pursuant to 44 U.S.C. 2903, to enter into a contract for construction and related services for a new National Archives facility in Prince George's County, Maryland, on a site provided, without charge, to the United States by the University of Maryland or the State of Maryland, which site may be transferred to the United States by less than fee simple estate, but shall remain available to the United States so long as it shall be used as a National Archives facility. The contract shall provide, by lease or installment payments payable out of annual appropriations over a period not to exceed thirty years, for the payment of the purchase price and associated costs, which shall not exceed $205,000,000 plus escalation to the midpoint of construction, and reasonable interest thereon. The contract shall further provide that title to the building shall vest in the United States at or before the expiration of the contract term upon fulfillment of the terms and conditions of the contract."

The authorizing language for Archives II permitted the Archivist to enter into a contract for construction and related services either by lease or by installment payments payable out of annual appropriations over a period not to exceed 30 years.

1991 Budget Display

The Archives II facility is being shown in the President's budget as follows:

	Dollars in Millions		
	1989	1990	1991
Budget Authority	$101.7	$ 0	$ 0
Outlays	0	80.1	108.8

The $101.7 million represents the aggregate principle amount of National Archives Facility Trust Certificates of Participation.

The outlay amounts reflect the face amount or principle of funds invested at their maturity date. Funds will actually be outlayed when reimbursements are made to GSA to repay amounts spent on construction.

Outyears

Appropriations of approximately $29 million are required beginning in 1994, for 26 years, in order to make semi-annual payments to the certificate holders. OMB has included these funds in outyear estimates.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

PROGRAM DIRECTION
(dollars in thousands)

Activity	Appropriation						Increases or Decreases (-) for 1991					
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes		Program Changes		Other Changes	
	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
Records Centers	52	3,614	66	$3,790	66	$ 3,904	-	$114	-	$ 68	-	$ 46
Archives & Related	80	5,560	102	5,831	102	6,004	-	173	-	64	-	109
NHPRC	1	93	2	97	2	100	-	3	-	1	-	2
Total	133	$9,267	170	$9,718	170	$10,008	-	$290	-	$133	-	$157

BACKGROUND

This activity provides for general direction and program support for all National Archives and Records Administration (NARA) programs. Direction is provided by the Archivist and an administrative staff. The Archivist's staff ensures coordination among the offices' programs, provides legal advice, promotes the efficient utilization of resources, maintains liaison activities with the Congress, provides policy on budget and personnel matters, conducts audits, manages facilities and the procurement program, evaluates programs, and coordinates ADP systems.

JUSTIFICATION

A Highlights

Program direction is less than 8 percent of the Archives' total budget. This is the result of NARA's commitment to streamlined operations, productivity, and innovation. For example, ADP activities have been consolidated in order to develop a single agency-wide hardware and software architecture. This will serve data processing requirements for Federal records throughout their life cycle, and also provide a shared reference data base. In an ongoing effort to improve management oversight and administrative efficiency, NARA is conducting management and productivity studies in both archival and administrative activities. In 1990, studies will be made of NARA's procurement activity, fee schedule, presidential library system, holdings maintenance, military reference branch, Suitland general reference branch, and Navy branch of the NPRC.

In response to the Administration's policy of reducing administrative support costs, the Archives has a cross-servicing agreement with GSA for payroll and accounting services. NARA also utilizes the Diner's Club travel card program and the government-wide commercial VISA credit card program for purchases. The Archives continues to contract out Washington, D.C. area mail service and monitoring of the unemployment program.

Personnel management services are provided nationwide through a centralized employment policy branch in Washington, D.C., and an operations branch in St. Louis, Missouri.

Program direction staff are responsible for all aspects of facility management for the Archives building including security, operation, and maintenance. In addition, staff provide management oversight for major repair and alterations projects at the Archives building.

In 1988, the Office of Management and Administration contracted for design of a new Archives facility in Maryland. This facility will enable NARA to consolidate activities in the Washington metropolitan area from twelve locations to three and meet state-of-the-art environmental specifications required for long-term preservation of a variety of historical records. Construction began in November, 1989 and is expected to be completed in October, 1993.

B. Explanation of Changes, 1990 versus 1991

Program Changes. An increase of $133,000 is due to program restorations.

Other Changes. These changes include increases of $62,000 for the increased cost of goods and services; $38,000 for operation and maintenance of the Archives building; and $57,000 for annualization of the 1990 pay raise.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

WORKLOAD FACTORS

	1989 Actual	1990 Estimate	1991 Request	Percentage Change from 1990
Records Centers (000s)				
Records Holdings	16,413	16,905	17,412	3%
Accessions	1,005	1,128	1,167	3%
Disposals	410	484	503	4%
Reference Services	3,368	4,165	4,248	2%
Archives and Related Services (000s)				
National Archives				
Reference Services	3,154	3,576	3,855	8%
Description	178	141	151	7%
Relocation of Records	31	40	115	190%
Accessions	51	71	74	4%
Appraisal	19	10	10	-
Preservation				
Microfilm (images)	7,897	7,653	7,653	-
Textual (pages)	166	215	215	-
Non-Textual (items)	2,820	3,446	3,446	-
Holdings Maintenance (cubic feet)	97	139	141	1%
Audiovisual Information Services	20	21	22	1%
Presidential Libraries				
Reference Services	473	524	569	9%
Arrangement	1,409	1,839	1,770	-4%
Units Preserved	1,415	1,280	1,120	-13%
Acquisitions	45,047 1/	6,753	4,013	-41%
Federal Register				
Total Manuscript Pages Processed	890	887	888	-
Records Declassification				
Pages Examined	12,506	15,000	15,000	-
Classified Pages Reviewed	3,777	4,000	4,000	-
Pages Declassified	3,209	3,250	3,250	-
National Historical Publications and Records Commission (Actual)				
Grants/Projects Reviewed	176	200	176	-12%
Grants Awarded/Projects Endorsed	103	125	103	-18%
Fellowship and Institute Applications Reviewed	110	110	110	-
Grant Projects Monitored	170	200	170	-15%
Records Researched (000s)	675	725	675	-7%

1/ Reagan materials acquired in 1989.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

SUMMARY OF EMPLOYMENT
(number of workyears)

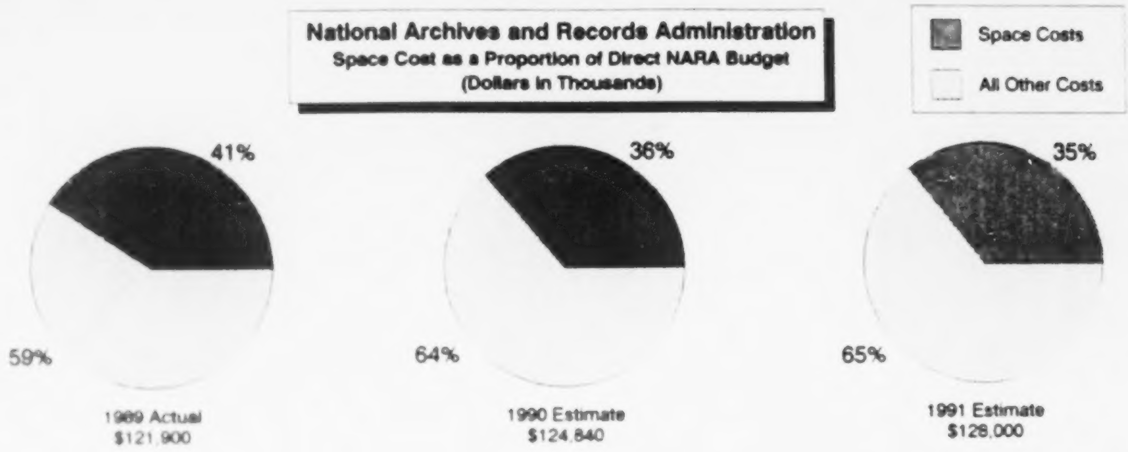
Principal Categories	1989 Actual	1990 Estimate	1991 Estimate	Changes for 1991		
				Total	Program	Other
Management and Administrative Direction	216	214	214	-	-	-
Professional	389	430	433	+3	+3	-
Technical	285	339	349	+10	+10	-
Clerical/Archival Support 1/	550	622	627	+5	+5	-
Other	52	63	63	-	-	-
Subtotal	1,492	1,668	1,686	+18	+18	-
Part-time and Temporary Workyears	259	351	351	-	-	-
Total	1,751	2,019	2,037	-	-	-

1/ Includes clerk typists, secretaries, stenographers, junior level archives technicians, archives aids, and other clerks.

National Archives and Records Administration

Space Cost as a Proportion of Direct NARA Budget

(Dollars in Thousands)



	1989 Actual	1990 Estimate	1991 Estimate
Rent*	$22,889	$24,365	$25,867
Operation and Maintenance Costs	11,495	12,708	14,312
Recurring and Non-Recurring Reimbursables	948	811	830
Repairs and Alterations	10,848	7,330	4,100
Archives Facility Design	10,000	0	0
TOTALS	$56,180	$45,214	$45,109
Total Square Feet	6.2 million	6.3 million	6.4 million

*Excludes Rent costs paid from OE, NARA Reimbursable account (1989, $4.9M; 1990, $5.2M; 1991, $5.3M)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

CONSULTING SERVICES

(dollars in thousands)

Account Title	1989 Actual	1990 Estimate	1991 Estimate	Description
Operating Expenses	$416	$400	$413	To develop scientifically engineered work standards for NARA activities. NARA does not have the in-house capability

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

APPROPRIATION LANGUAGE

For necessary expenses in connection with National Archives and Records Administration and related activities, as provided by law, and for expenses necessary for the review and declassification of documents, and for the hire of passenger motor vehicles, [$126,612,000] $128,000,000, of which [$5,000,000] $4,000,000 for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, as amended, shall remain available until expended. (1 U.S.C. 106a, 106b, 112, 113, 201; 3 U.S.C. 6, 11-13; 4 U.S.C. 141-146; 5 U.S.C. App. 1; 25 U.S.C. 199a; 44 U.S.C. 710, 711, 729, Chapters 15, 21, 22, 25, 29, 31, 33; Public Law 98-497, Public Law 93-526, Executive Orders 11440, 12356, 10530, 11030, 11490, as amended; Independent Agencies Appropriations Act, 1990.)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Advances and Reimbursements

ANALYSIS OF AUTHORIZED LEVEL FOR 1991
(dollars in thousands)

	Permanent Positions	Work-years	Amount
1990 Level of Reimbursable Services	361	741	$23,626
Decrease in Reimbursable Services	20	-23	-2,551
1990 Revised Level of Reimbursable Services	381	718	$21,075
1991 Level of Reimbursable Services	381	718	$21,373
Change from 1990 to 1991	--	--	$ +298

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR 1991

	Summary						Increases or Decreases (-) for 1991					
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes		Program Changes		Other Changes	
Activity	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-Years	Amount
Records Centers	549	$18,039	632	$18,654	632	$18,940	-	$ 286	-	$ 103	-	$ 183
Archives & Related Services	82	2,116	86	2,421	86	2,433	-	12	-	-	-	12
Total	631	$20,155	718	$21,075	718	$21,373	-	$ 298	-	$ 103	-	$ 195
Permanent Positions	352		381		381		-		-		-	

OVERVIEW OF NARA REIMBURSABLE PROGRAMS

The Federal Records Centers provide for the accessioning, storage, reference service, and disposal of the semi-active and non-current records of Federal agencies through a nationwide system of 14 records centers. The centers provide these services on current records when it can be shown that there is a net savings to the government and when the agency originating the records is willing to reimburse NARA for the expenses incurred. The centers also provide microfilming services to other agencies on a reimbursable basis. The records centers store active tax returns, passport applications files, Social Security claims folders and Social Security Administration (SSA) Title XVI folders. Reference services are performed primarily for IRS, SSA, Passport, USPS, and the Air Force Accounting Center.

The National Archives and Presidential libraries provide photocopy services on the permanently valuable records for the National Archives Trust Fund Board. The Board reimburses these programs for such services. Other programs include a declassification program, in which records are reviewed prior to their accession into the National Archives, and records management training of other federal agencies.

SUMMARY EXPLANATION OF CHANGES FROM 1990 TO 1991

(dollars in thousands)

Changes	Records Centers		Archives and Related Services		Totals	
	Work-years	Amount	Work-years	Amount	Work-years	Amount
PROGRAM CHANGE						
Increase						
Microfilming, IRS and General Reference	-	$103	-	$ -	-	$103
Total Program Change	-	103	-	-	-	103
OTHER CHANGES						
Increases						
A Rent	-	155	-	-	-	155
B Goods and Services	-	28	-	12	-	40
Total Other Changes	-	183	-	12	-	195
Total Increases/Decreases Compared to 1990	-	$286	-	$12	-	$298

EXPLANATION OF CHANGES, 1990 versus 1991

The reimbursable program for 1991 is estimated at $21,373,000, an increase of $298,000 from the 1990 reimbursable program. The program increases consist of $103,000 for microfilming services and general reference workload. Other changes include increases of $155,000 for space costs, and $40,000 for the increased cost of goods and services

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Advances and Reimbursements

DISTRIBUTION BY OBJECT CLASS
(dollars in thousands)

	Object Classification	1989 Actual	1990 Estimate	1991 Estimate
11.1	Full-time Permanent	$ 7,117	$ 7,006	$ 7,006
11.3	Other than Full-time Permanent	4,072	4,595	4,644
11.5	Other Personnel Compensation	206	190	200
11.9	Total Personnel Compensation	11,395	11,791	11,850
12.1	Civilian Personnel Benefits	1,791	1,596	1,608
13.0	Benefits for Former Personnel	289	480	485
21.0	Travel and Transportation of Persons	120	116	120
21.0	Motor Pool Travel	5	3	3
22.0	Transportation of Things	56	12	13
23.1	Rental Payments to GSA	4,854	5,170	5,325
23.3	Communications, Utilities and Miscellaneous Charges	131	132	136
24.0	Printing and Reproduction	5	12	12
25.0	Other Services	580	594	613
26.0	Supplies and Materials	587	654	675
31.0	Equipment	342	500	515
32.0	Land and Structures	--	15	18
99.0	Total Obligations	$20,155	$21,075	$21,373

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Advances and Reimbursements

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS IN 1991

11 Personnel Compensation - $11,850,000 For 718 work years

12 Personnel Benefits - $1,608,000 Includes $958,000 for direct contribution to the retirement fund, $379,000 for health benefits, $15,000 for group life insurance, and $256,000 for FICA and medicare hospital insurance

13 Benefits for Former Personnel - $485,000 Provides for unemployment compensation payments to former Federal employees

21 Travel and Transportation of Persons - $123,000 Provides for travel and motor pool services required for administration of reimbursable programs and technical assistance projects

22 Transportation of Things - $13,000 For accessioning and transfer of records, supplies and equipment by commercial carriers

23.1 Rental Payments to GSA - $5,325,000 Provides for payments to the General Services Administration's Federal Buildings Fund for space for IRS, SSA and USPS records

23.3 Communications, Utilities, and Miscellaneous Charges - $136,000 Provides for equipment rental, UPS charges and utility costs

24 Printing and Reproduction - $12,000 Includes reproduction of records, printing of technical assistance reports, and electrostatic copying

25 Other Services - $613,000 Includes $108,000 for personnel security clearances, training courses, etc., $38,000 for ADP services, and $467,000 for other contractual services

26 Supplies and Materials - $675,000 Includes $275,000 for records centers program supplies, including microfilm and cardboard containers, and $400,000 for administrative supplies and materials

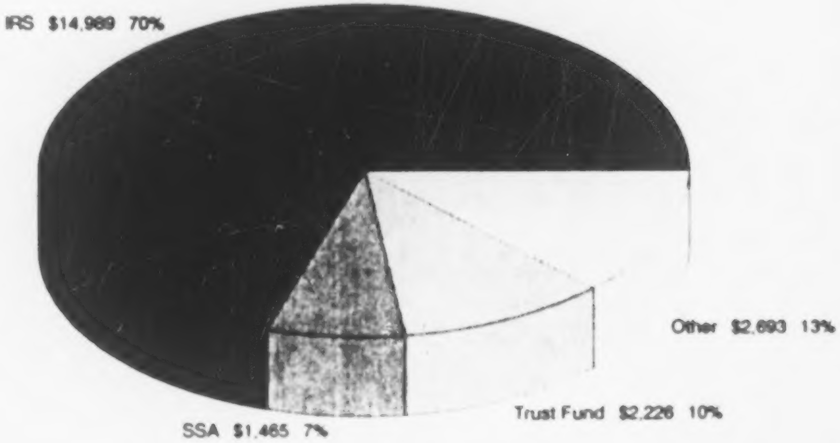
31 Equipment - $515,000 Includes microfilm equipment

32 Land and Structures - $18,000 Provides for shelving, catwalks, and facility improvements in records centers

National Archives and Records Administration

Major Reimbursable Customers 1991

(Dollars in Thousands)



Total: $21,373

WORKLOAD FACTORS

	1989 Actual	1990 Estimate	1991 Request	Percentage Change from 1990
Records Centers (000s)				
IRS Accessions	506	519	534	3%
IRS Disposals	411	416	423	2%
Reference Services				
IRS 1/	14,586	13,100	13,200	1%
General	825	885	885	-
Microfilm (images)	20,453	20,800	20,850	-
Dropfiles	5,002	4,900	4,900	-
Technical Assistance Projects (each)	26	26	26	-
Workshops (each)	221	221	221	-
Photocopies	1,500	1,525	1,530	- 2/
IRS Photocopy Requests	552	555	526	-5%
Archives and Related Services (000s)				
National Archives				
Reproductions	1,645	1,684	1,725	2%
Presidential Libraries				
Reproductions	110	131	141	8%
Records Declassification				
Pages Examined	2,272	3,800	3,800	-
Classified Pages Reviewed	705	1,650	1,650	-
Pages Declassified	619	1,470	1,470	-

1/ IRS reference service estimates and 1989 actuals have decreased from previous years due to a decline in reimbursable work performed by the Records Centers for the IRS

2/ Less than 1%

SUMMARY OF EMPLOYMENT
(number of workyears)

Principal Categories	1989 Actual	1990 Estimate	1991 Estimate	Changes for 1991		
				Total	Program	Other
Management and Administrative Direction	25	24	24	-	-	-
Professional	7	13	13	-	-	-
Technical	129	110	110	-	-	-
Clerical/Archival Support 1/	175	155	155	-	-	-
Other	4	12	12	-	-	-
Subtotal	340	314	314	-	-	-
Part-time and Temporary Workyears	291	404	404	-	-	-
Total	631	718	718	-	-	-

1/ Includes clerk typists, secretaries, stenographers, junior level archives technicians, archives aids, and other clerks.

NATIONAL ARCHIVES GIFT FUND

ANALYSIS OF AUTHORIZED LEVEL FOR 1991

(dollars in thousands)

	1989 Actual	1990 Estimate	1991 Estimate
Financing			
Prior Year Carry Forward	$2,143	$2,087	$2,168
Permanent Indefinite Budget Authority	231	421	646
Total Availability	2,374	2,508	2,814
Obligations	287	340	1,216
Unobligated Balance	$2,087	$2,168	$1,598

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR 1991

(dollars in thousands)

	Summary						Increase or Decrease (-) for 1991	
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes	
Activity	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
Historical Research, Conferences, and Publications	-	$ 212	-	$ 235	-	$ 295	-	$ 60
Presidential Libraries	-	75	-	105	-	921	-	816
Total Obligations	-	$ 287	-	$ 340	-	$1,216	-	$ 876

SUMMARY JUSTIFICATION OF 1991 BUDGET ESTIMATE

The National Archives Gift Fund was established to administer incoming grants and donations. Expenditures are made for historical research and grants.

Gifts of money and property are made by individuals and organizations for the benefit of archival and records activities and are expended from the Gift Fund in accordance with donor restrictions, if any.

Total expenses for 1991 are estimated at $1,216,000, an increase of $876,000 compared to 1990 estimated expenses of $340,000. The increase includes $811,000 for museum renovations and construction and installation of new exhibits associated with the Kennedy and Truman Presidential Libraries; an increase of $57,000 in grants; and $8,000 for the increased cost of goods and services.

AUTHORIZING LANGUAGE

Grants and donations are deposited to this fund to benefit Archives collections and services according to the terms of the donor (44 U.S.C. 2305).

DISTRIBUTION OF ESTIMATES BY OBJECT CLASS
(dollars in thousands)

Object Classification	1989 Actual	1990 Estimate	1991 Estimate
21.0 Travel and Transportation of Persons	$ 21	$ 7	$ 7
24.0 Printing and Reproduction	1	31	11
25.0 Other Services	112	77	908
26.0 Supplies and Materials	24	52	60
41.0 Grants, Subsidies and Contributions	129	173	230
99.0 Total Obligations	$ 287	$ 340	$ 1,216

ANALYSIS OF AUTHORIZED LEVEL FOR 1991
(dollars in thousands)

Income/Cost Comparison--Summary	1989 Actual	Change 1989 vs. 1990	1990 Estimate	Change 1990 vs. 1991	1991 Estimate
Operating Income	$10,611	$ 441	$11,074	$ 596	$11,670
Operating Expense	10,101	904	11,005	195	11,200
Net Operating Income or Loss (-)	$ 532	$ -463	$ 69	$ 401	$ 470
Non-Operating Income or Loss (-)	856	45	901	203	1,104
Net Profit or Loss (-)	$ 1,388	$ -418	$ 970	$ 604	$ 1,574
Net Outlays	$-1,386	$ +190	$-1,196	$ +28	$-1,168

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR 1991
(dollars in thousands)

	Summary						Increase or Decrease (-) for 1991					
	1989 Actual		1990 Estimate		1991 Estimate		Total Changes		Program Changes		Other Changes	
Activity	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount	Work-years	Amount
Reproduction Services	65	$ 8,412	69	$ 7,314	69	$ 7,640	-	$ 326	-	$ 315	-	$ 11
Presidential Libraries	63	2,748	75	3,054	75	3,664	-	610	-	590	-	20
Total Obligations	108	$11,160	144	$10,368	144	$11,304	-	$ 936	-	$ 905	-	$ 31
Permanent Positions (Total)	72		118		118		-		-		-	

SUMMARY JUSTIFICATION OF 1991 BUDGET ESTIMATE

The National Archives Trust Fund receives, holds, and disburses monies collected from sales of reproduction of records in the National Archives, Presidential libraries, and the Federal records centers; sales of reproductions of audiovisual materials produced by or for the Federal government by the National Audiovisual Center; sales of publications and historical mementos in the National Archives Building and the Presidential libraries; admission fees to the Presidential libraries; and collection of fees for archival training and conferences.

Reproduction of Records. Reproductions of all varieties of records including documents, photographs, maps, motion pictures, and ADP tapes in the National Archives, the Presidential libraries, and the Federal records centers are made upon request and sold to the public, to scholars and to Federal agencies. These reproductions are used for scholarly research, genealogy and family history, to illustrate books and articles, to preserve records, and to make new motion pictures and video productions.

Publications and Historical Mementos. The Trust Fund publishes or purchases for resale books and other printed materials based upon the records in the National Archives and the Presidential libraries. These publications include facsimiles of the Declaration of Independence and Constitution, genealogical guides, and memoirs of former Presidents. The fund also manufactures or purchases for resale items for visitors to the National Archives Exhibit Hall and the Presidential libraries. Such items include post cards, color slides, and posters.

Admission Fees. Fees are charged for admission to the exhibits at most of the Presidential libraries.

National Audiovisual Center. The center sells and rents to the public audiovisual materials (motion pictures, photographic slides, audio tapes, etc.) produced by or for agencies of the Federal government. These materials cover the wide range of programs in which the Federal government is involved and include materials on health and safety, science and technology, business and economics, agriculture and industrial arts.

Total obligations for 1991 are estimated at $11,304,000, a net increase of $936,000 over 1990 estimated obligations of $10,368,000. This is due to an increase of museum exhibit activities and sale of museum items at 5 of the 8 Presidential libraries; for the increase in sales of historical mementos at the National Archives; for museum exhibit renovations and redesign projects at the Truman and Kennedy Libraries, and for the increased cost of goods and services.

AUTHORIZING LANGUAGE

The Archivist of the United States furnishes, for a fee, copies of unrestricted records in the custody of the National Archives (44 U.S.C. 2116).

Proceeds from sale of copies of microfilm publications, reproductions, and other publications and admission fees to Presidential library museum rooms are deposited to this fund (44 U.S.C. 2108).

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR 1991
(dollars in thousands)

Activity	Reproduction Services		Presidential Libraries		Total	
	Workyears	Amount	Workyears	Amount	Workyears	Amount
Program Changes: Increased sales, reproduction, Library museum activities, and museum exhibit renovations and redesign	-	$ 315	-	$ 590	-	$ 905
Other Changes: Cost of Goods and Services	-	11	-	20	-	31
Total Changes, 1990 to 1991	-	$ 326	-	$ 610	-	$ 936

SELECTED WORKLOAD FACTORS
(units in thousands)

Workload Factors	1989 Actual	1990 Estimate	1991 Estimate	Percentage Change from 1990
Reproductions of Records				
National Archives 1/	6,359	6,484	5,425	-16%
Presidential Libraries	414	471	502	7%
Federal Records Centers	1,500	1,525	1,530	- 2/
Publications and Historical Mementos (units sold)				
National Archives	341	341	343	- 2/
Presidential Libraries	744	863	801	-7%
Presidential Library Paid Admissions (No.)	587	710	669	-6%
National Audiovisual Center				
Audiovisual Materials: number of sales and rentals	19	20	21	5%

1/ National Archives reproductions decrease in 1991 due to the completion of the Supreme Command Allied Powers (SCAP) Project.

2/ Less than 1%

DISTRIBUTION OF ESTIMATES BY OBJECT CLASS
(dollars in thousands)

	Object Classification	1989 Actual	1990 Estimate	1991 Estimate
11.1	Full-time Permanent	$ 1,826	$ 2,426	$ 2,450
11.3	Other than Full-time Permanent	193	251	253
11.5	Other Personnel Compensation	86	112	113
11.9	Total Personnel Compensation	$ 2,105	$ 2,789	$ 2,816
12.1	Civilian Personnel Benefits	430	569	575
13.1	Benefits for Former Personnel	11	15	15
21.0	Travel and Transportation of Persons	76	40	42
22.0	Transportation of Things	21	13	15
23.1	Rental Payments to GSA	94	94	94
23.3	Communications, Utilities and Miscellaneous Charges	801	804	827
24.0	Printing and Reproduction	1,259	1,507	1,561
25.0	Other Services	3,856	3,112	3,869
26.0	Supplies and Materials	1,896	1,045	1,110
31.0	Equipment	613	380	380
99.0	Total Obligations	$11,160	$10,368	$11,304

SUMMARY OF EMPLOYMENT
(number of workyears)

Principal Categories	1989 Actual	1990 Estimate	1991 Estimate
Management and Administrative Direction	14	23	23
Professional	3	5	5
Technical	22	36	36
Clerical/Archival Support 1/	29	47	47
Other	4	7	7
Subtotal	72	118	118
Part-time and Temporary Workyears	36	26	26
Total	108	144	144

1/ Includes clerk typists, secretaries, stenographers, junior level archives technicians, archives aids, and other clerks

TUESDAY, MARCH 13, 1990.

FEDERAL LABOR RELATIONS AUTHORITY

WITNESSES

JEAN McKEE, CHAIRMAN
KATHLEEN DAY KOCH, GENERAL COUNSEL
TONY ARMENDARIZ, MEMBER
PAMELA TALKIN, MEMBER
LINDA LAFFERTY, EXECUTIVE DIRECTOR, FEDERAL SERVICE IMPASSES PANEL

Mr. ROYBAL. The committee will now hear from the Federal Labor Relations Authority. I am asking Ms. McKee to proceed in any manner that you desire.

INTRODUCTIONS

Ms. McKEE. Thank you, Mr. Chairman. I am Jean McKee, the Chairman of the Federal Labor Relations Authority, and it is a pleasure to be here again with you as we were last year. But it is a distinct pleasure because now we have a full complement of members on the Authority.

As you may recall, I was, what was termed by Chase Untermeyer, the lonely warrior, for one year and 29 days on the Authority. So I would like to introduce to you Pamela Talkin. She came to us having been the Chief of Staff at the Equal Employment Opportunity Commission, and, before that, was with the National Labor Relations Board. So she has a broad background in the area of Federal service.

Our next member is Tony Armendariz, who comes to us from Texas, where he was a lawyer and general counsel, or chief counsel, for the Texas University system in South Texas. He had worked at one point with the EEOC and was with the State Attorney's General Office in Texas, so he has a broad background in employee and labor relations.

Also, on my right, who was here last year, is Kathy Koch, our general counsel, who had only been with us two months last year but is certainly well-versed in our activities.

Mr. ROYBAL. I would like to welcome your new members. This is your first experience with us. I do not think you are going to be disappointed because we are very nice.

Ms. McKEE. I can attest to that.

Mr. ROYBAL. Please proceed.

Ms. McKEE. Yes. We have submitted our written statement, but may I just highlight where we are?

Mr. ROYBAL. The written statement then will be included in the record at this point. You may summarize.

[The information follows:]

STATEMENT OF JEAN MCKEE
CHAIRMAN
FEDERAL LABOR RELATIONS AUTHORITY
Before the Subcommittee on Treasury, Postal Service, and General Government
Committee on Appropriations
U.S. House of Representatives

Fiscal Year 1991 Appropriations Request

Mr. Chairman and Distinguished Members of the Committee:

I appreciate this opportunity to appear before you to discuss the Federal Labor Relations Authority's FY 1991 appropriation request.

The Federal Labor Relations Authority is an independent, adjudicatory agency. The Authority consists of three full-time Members who are appointed by the President with the advice and consent of the Senate. The President designates the Chairman, who serves as chief executive and administrative officer of the agency. The Chairman serves also as the Chairperson of the Foreign Service Labor Relations Board, and is responsible for appointing the other two Members of the Board.

The Authority includes an Office of the General Counsel, which is under the direction of the General Counsel. The General Counsel is appointed by the President and confirmed by the Senate. The Authority also includes the Federal Service Impasses Panel, which is composed of seven part-time Presidential appointees. The staff of the Panel supports the Foreign Service Impasse Disputes Panel, which is composed of five Members who are appointed by the Chairman of the Authority.

The appropriations request before you is for $18,443,000 and 257 full-time permanent positions. This represents an increase of $853,000 and one position above our current authorized level.

This request will enable the Federal Labor Relations Authority to fulfill its statutory responsibilities to (1) provide leadership in establishing policies relating to Federal-sector labor-management relations; and (2) timely resolve Federal-sector labor-management disputes.

Approximately 76 percent of the Federal Labor Relation Authority's budget consists of personnel compensation and benefits. Rental and telecommunication payments constitute another 14 percent of the budget. As the table below depicts, all other categories combined account for only 10.6 percent of the budget.

Item	Percent of Total Budget Request
Personnel Compensation and Benefits	75.6%
Rental Payments to GSA	11.3%
Communications, Utilities, and Other Rents	2.5%
All Other Categories	10.6%
	100.0%

Since I last appeared before this committee, I have been nominated by the President and confirmed by the Senate to a full 5-year term. Kathleen Day Koch also was nominated by the President and confirmed by the Senate as General Counsel. In addition, the President has nominated and the Senate has confirmed Pamela Talkin and Tony Armendariz as Members, providing the Authority with its full member complement.

As you know, due to a lack of a quorum, the Authority was unable to issue decisions for more than a year. Since the arrival of Members Armendariz and Talkin in late November, 189 cases have been closed through the end of February. I believe this outstanding record affirms the determination of all of us to eliminate the overage case inventory, which developed during the past year, as quickly as possible. As of February 28, 1990, the Authority's case inventory stood at 547 cases.

I have set a goal of issuing all decisions within 6 months of receipt by January 1, 1991. With the current pace we have established and our current case inventory, I believe that by that date, we will once again be closing cases on a timely basis.

We face a number of significant issues in the next year, both in the Authority and in the Courts. While I cannot discuss any specific cases, I would like to take this opportunity to cite some of the more significant issues they encompass.

We have several cases concerning the extent to which Federal agencies must bargain over the initiation of drug-testing programs and the procedures for testing. There are other cases which raise questions over the need to bargain before initiating smoke-free work places and the duty of Federal unions to represent employees who are not dues paying members.

Another focus this year will be the issuance of Supreme Court decisions on several important issues. Already the Court has heard arguments on two key Authority decisions. Fort Stewart Schools v. FLRA concerns the negotiability of pay and fringe benefits where this is left to agency discretion. This is an issue which has been before a number of Federal Courts. With different results in different jurisdictions, we look forward to Supreme Court guidance in this area.

The other case heard by the Supreme Court involves the issue of whether a union may negotiate a grievance procedure which includes alleged violations of OMB Circular A-76 in contracting out actions. This is U.S. Customs Service v. FLRA.

As you can see, the Authority must concentrate on processing cases and on its court appearances for the next year. However, while we do this, the Authority must also be cognizant of its larger role in providing leadership in establishing policies and guidance in Federal sector labor relations.

As I look to the future, it is clear to me that the Authority must begin to take the lead in improving the total labor-management relations program. I am not convinced at this juncture that litigating disputes through the legal framework results in improved relationships between labor and management or between employee and employer.

With this in mind, our FY 1991 budget submission requests one additional position and $100,000 so that the Authority may take a more active leadership role in Federal-sector labor relations. That role envisions:

1. A conference bringing together the various allied agencies and labor to look at Federal cooperative efforts and why they succeed or fail.

2. Face-to-face meetings with agency and union representatives. These meetings would provide an opportunity to look for barriers to cooperative efforts, whether in the law, or as a result of court or FLRA decisions.

3. Providing training to unions and management on their rights and responsibilities so that we see fewer cases covering the same issues.

4. Creating and distributing two Labor Management pamphlets.

These are just a few of the opportunities I see to bring about a more stable and fruitful relationship for both labor and management in the Federal sector.

Administratively, the Office of the General Counsel is continuing its efforts to improve and modernize its ADP capabilities. Our request asks for $430,000 to complete this effort. General Counsel Koch will discuss this proposal in more detail.

With this background in mind, I would like to briefly address the Authority's six budgetary decision units.

The Authority Members decision unit is responsible for processing all cases which have been referred to the Authority for adjudication. These cases include unfair labor practices which have been prosecuted by the General Counsel, negotiability disputes, and review of arbitration awards. In addition to the Offices of the Members, this unit includes the Office of Case Control, the Office of Information Resources and Research Services, and the Office of the Solicitor.

The Office of Case Control maintains the Authority's docket room, prepares case files, reviews filings for conformance with procedural requirements, and issues decisions which have been approved by the Members. The Offices of the Members review and analyze case files, conduct legal research, and prepare draft decisions for the Member's review and approval. The Office of Information Resources and Research Services maintains the Authority's automated case tracking system, publishes subject matter indices and digests, and prepares Authority decisions for publication by the Government Printing Office. The Office of the Solicitor represents the Authority in all judicial proceedings. The Authority Members decision unit also provides services to the Foreign Service Labor Relations Board in resolving disputes arising under the Foreign Service Act of 1980.

During FY 1991, the Authority expects to receive 549 cases and to close 701 cases. These projections assume that the number of cases filed with the Authority will not increase over the number projected for FY 1990.

The Office of the General Counsel decision unit has statutory responsibilities to (1) investigate alleged unfair labor practices and (2) file and prosecute unfair labor practice complaints. The General Counsel has direct authority over and responsibility for employees in the Authority's regional and subregional offices. Regional Directors, who are included in this program unit, have been delegated the responsibility by the Authority to decide representation cases. Applications for review of Regional Director's decisions may be filed with the Authority.

Kathleen Day Koch, the General Counsel, will specifically address the program and budgetary aspects of the Office of the General Counsel decision unit in her prepared statement.

The Office of Administrative Law Judges decision unit is responsible for (1) holding hearings in unfair labor practice cases where complaints have been issued by Regional Directors, and (2) issuing recommended decisions in those cases. Exceptions to recommended decisions may be filed with the Authority. During FY 1991, we project that the Administrative Law Judges will issue 156 recommended decisions and an additional 832 cases will be settled.

The Federal Service Impasses Panel decision unit assists agencies and unions in resolving negotiation impasses which arise under the Federal Service Labor-Management Relations Statute and the Federal Employees Flexible and Compressed Work Schedules Act. The Panel's staff also supports the Foreign Service Impasse Disputes Panel in resolving impasses arising under the Foreign Service Act of 1980.

Among the techniques used by the Panel to resolve impasses are factfinding, informal conferences, and interest arbitration.

We project the Panel will receive 310 requests for assistance and will close 250 cases during FY 1991.

The Management and Administrative Support decision unit provides administrative support to all agency components in the headquarter's and the regional offices. This support includes: budget, financial, personnel, security, procurement, and other administrative services.

Finally, the Office of the Inspector General decision unit was established in Fiscal Year 1989 as a result of the Inspector General Act Amendments of 1988, P.L. 100-504. The Office of the Inspector General has several significant functions which include: (1) conducting and supervising audits, operations reviews, and investigations relating to the functions of the FLRA; (2) providing leadership in the area of promoting efficiency and effectiveness within the FLRA's programs and operations; (3) preventing and detecting fraud, waste and abuse; and (4) keeping the Chairman and the Congress fully informed about problems or deficiencies which may be identified.

The Federal Labor Relations Authority remains committed to providing leadership in promoting sound Federal sector labor relations. As Chairman, I am personally committed to accomplishing our mission in a way which uses our resources as effectively and efficiently as possible. It is in that spirit that I request your approval of our appropriation request.

Mr. Chairman, this concludes my prepared remarks. I welcome an opportunity to answer any questions you and the Members of your Committee may have.

STATEMENT OF KATHLEEN DAY KOCH,
GENERAL COUNSEL
FEDERAL LABOR RELATIONS AUTHORITY
BEFORE THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, and Members of the Committee:

Thank you for the opportunity to appear before you in support of our budget proposal. This is the first budget proposal that I have been involved in from the beginning. I'm not simply inheriting someone else's priorities and objectives.

This past year, my first year as the General Counsel, has been an exciting one and, I believe, a productive one. As you may remember our total FTE was reduced for the current fiscal year by five positions. In anticipation of that reduction and for the purpose of improving the management of the Office of the General Counsel, I conducted a reorganization of our headquarters office. As a result of the reorganization, three of the five staff-years reduction were absorbed by the headquarters. Thus, the impact of the reduction on those persons directly involved in the investigation and prosecution was minimal. More importantly, the reorganization improved the efficiency of our operations and more clearly defined the levels of responsibility and accountability for the headquarters staff.

I also took a giant step toward improving the technology in the Office of the General Counsel. Very soon after assuming the position I purchased "fax" machines for the headquarters office and each of the regional offices. Because 117 of our 132 positions are located among nine regional offices and two sub-regional offices, the "fax" machines have proven to be invaluable in improving the speed and effectiveness of our communications.

When I came to the Office of the General Counsel, I was appalled to find that we were attempting to perform our work on very antiquated word processors. The computerized technology for tracking workload and case outcomes and for doing word processing was out of date. Although much of the work-data and case-load data is still collected manually, I was able to take an initial step in remedying this situation by replacing all of the existing word processors with new personal computers. These computers will eventually be utilized for far more than word processing. By purchase of additional software and adding other computer capabilities to our PC's, we will be able to use the computers to monitor workload, measure our performance, get instant communication among regional offices and our clientele and, research legal issues.

Although the Office of the General Counsel has a higher caseload and fewer FTE than in the early years of FLRA, we expect that our enhanced management capabilities, technological resources, and more well-developed staff resources will enable us to continue to provide effective service to the Federal employees, agencies and unions within our jurisdiction, and to meet increased productivity demands.

In our budget request for fiscal year 1991 we are seeking an increase of approximately $500,000 over this fiscal year's appropriation, of that, $430,000 would be used to purchase ADP equipment that will vastly improve our technological capabilities. Approximately $70,000 would be used to meet the increased operation costs resulting from pay raises and inflationary increases.

I think the Office of the General Counsel has come a long way in the past year, but I believe our proudest years are ahead of us. I wish to thank this committee and its staff for its past cooperation.

That is essentially the highlight of the budget proposal for the Office of the General Counsel. More detailed information is contained in our budget submission. I will be happy to answer any questions on that.

Ms. **McKee**. Besides our new members, we are now processing cases once again. Last year we were unable to without a quorum, so we have issued 189 decisions since November 30, as of the end of February, which is a tribute to the new members and their capacity to swing into action and help us eliminate a severe backlog that had developed of overage cases.

This year, we are asking for a budget of $18,443,000, which is an increase over this year's budget of $853,000. There are two major categories where we are increasing the budget. One is for the general counsel, $430,000 to be principally dedicated to the computerization of their program. They were very far behind in the state of the art technology, and it was time for them to really enhance their capacity to be productive. I am sure Kathy will want to talk to that directly.

The other amount is about $370,000 for personnel and benefits. We are an unusual agency in the number of top-level staff, with three members; a general counsel, an executive director, nine regional directors, and members of the Federal Service Impasses Panel and others. This put us at a great disadvantage in absorbing the pay raise, which we were all appreciative of, and the Office of Management and Budget agreed to fund about half that pay raise, because we did have a large number of highly-skilled people in our agency.

Then there is another $47,000 that goes to space and communications, especially rental figures, as we will be seeing an increase across the country. As you know, we have nine regional offices across the country, and oftentimes we are moved by GSA into new space as Federal Building space opens up or whatever. So we are not always in control of that space budget, but we do our very best to keep our space down to the standards as we can.

I think those are the main elements.

We do have a program next year that would focus, in addition to our efforts in processing decisions and rendering them, we would like to focus some of our attention on labor management cooperation efforts in the Federal sector. I am not convinced that just settling an individual dispute always benefits the relationship between the parties, so we would like to look to that as a focus for the next year. We will have one additional FTE, full time equivalent, employee dedicated to that effort, to do some training around the country with the parties, so that they better understand their rights and responsibilities, and we eliminate some of the repetitive cases that we see. As to some other efforts, along with our, call them sister agencies, others who are involved in this field, we'd look for ways to enhance labor-management cooperation efforts across the Federal sector.

I think that is where we are for this next year. I appreciate the opportunity to come before you and hope that our program will enhance the labor management relations across the Federal sector.

Mr. **Roybal**. Thank you, Ms. McKee.

RELATIONSHIP WITH MERIT SYSTEMS PROTECTION BOARD

As you know, we heard this morning from the Merit Systems Protection Board, the Office of the Special Counsel, and I would like to have you provide for us a description of the purpose of your organization as they compare to the Merit Systems Protection Board. How do you interrelate? Why do you have to have both Federal Labor Relations Authority, and the Merit Systems Protection Board?

Ms. McKee. I think that the theory that went with the change in the law back during the Carter Administration, originally, was to take out of the Civil Service Commission the combination of both setting the rules and regulations, and then adjudicating the disputes that arose under those rules and regulations, so that was the split.

Then the question is, I think, whether you put the persons who are within unions, and in a unit that is organized, under the same rules as maybe others. I think that is probably how the original division arose.

We handle only cases that come before us where a union or a union member is involved. We do not handle any other cases than those.

JURISDICTION

Mr. Roybal. Then you only handle unfair labor practices?

Ms. McKee. No. We have four areas.

Mr. Roybal. All right. Give me those four areas.

Ms. McKee. An Unfair Labor Practice charge is appealed to us after an administrative law judge has heard the case. That case has been investigated by the General Counsel's office first. They bring a charge, and a lot of them may settle. If the charge is carried forward, an administrative law judge hears it, and then the administrative law judge's decision can be appealed to us.

In addition, we handle arbitration cases. That is in a grievance, an arbitrator will have heard it, and we will be an appellate body in that.

Then there is what is negotiable between management and labor. In the Federal sector, as you know, management has a lot of rights, and when the union makes a proposal, management may say, "This is non-negotiable." Normally, management will say it is non-negotiable because it invades the management rights. Those proposals can then be appealed to us to review and see whether they are or they are not negotiable under the law.

The last area is representation cases. That is what is an appropriate unit, who can be in it, and whether the elections were handled under the law.

ARBITRATION CASES

Mr. Roybal. What I do not think I understand is how you fit into cases of arbitration when it is the union and management that arbitrates? How do you enter it?

Ms. McKee. What happens is one of the employees will have a grievance, and that grievance will proceed up, according to what is in the agreement between management and labor; there will be an agreement as to how the grievance will proceed. Maybe there is a first or a second supervisor that looks at it, and, if it is not settled, then it is mandatory that it go to an arbitrator

The arbitrator hears the grievance and renders a decision, and either party can appeal that arbitrator's decision to us.

Is that clear?

Mr. Roybal. Well, it is in a way but not completely, because if labor and management are, at the present time, in arbitration and there is a deadlock for whatever reason, do you then enter into it at the request of either party?

Ms. McKee. There will not be a deadlock because there is a person who is an arbitrator who hears the case that management and labor presents to the arbitrator, and the arbitrator gives a decision.

Mr. Roybal. I see.

Ms. McKee. Okay? The arbitrator renders a decision, and we look at that decision if it is appealed.

Mr. Roybal. All right. So you enter into the case after the arbitrator has taken action?

Ms. McKee. Yes.

Mr. Roybal. All right.

Ms. McKee. Now there are sometimes when employees have the opportunity to appeal, to a—well, say a grievance that could either be appealed to the Equal Employment Opportunity Commission or to us because of civil rights implications. There are some mixed cases like that.

Mr. Roybal. In these cases that you have, about what percentage of the cases do you actually resolve by compromise, and not necessarily going through final action?

Ms. McKee. Well, I guess that is hard. In the Unfair Labor Practice area, probably 90 percent of them are settled. Kathy may want to speak to that.

In the arbitration area, we know that we see about one-third of our cases, about 200 cases, that we would see. But, there may have been 700 arbitrations total, but only 200 would be appealed to us, but then there would be a whole group of cases that might have settled that we would never see.

Mr. Roybal. But in the cases of arbitration, the arbitrator takes a position.

Ms. McKee. Right.

Mr. Roybal. Then one of the two parties appeals to you.

Ms. McKee. Right.

Mr. Roybal. How many times, or what are the percentage of times, that you will reverse a decision made by the arbitrator?

Ms. McKee. I do not think that we keep that statistic that I am aware of.

Mr. Roybal. It would be interesting to know, because you go through all this process, and one would feel that the once it goes to an arbitrator that that is the end of the road.

Ms. McKee. Yes. We would like the arbitrator to be the end of the road, but, unfortunately, a lot of arbitrators are not well-trained in the Federal sector. They are much more trained in the private sector, so they may—the parties really have to bring to the table what the arbitrator needs to know, and that is a little bit awkward. There are some highly skilled in the Federal sector, but not out across the country. I think here in Washington, or where there are major Federal installations, you will find arbitrators who are very skilled across the country.

Mr. **Roybal**. It seems to me that there is a high percentage of those cases that go through an arbitrator that are appealed.

Ms. **McKee**. I know. It is much higher. It is like 20 percent as opposed to the private sector where there would be appeals of about two to three percent.

Mr. **Roybal**. Where is that different?

Ms. **McKee**. We talk to this every time we are out there speaking. We talk about this every time we are out speaking before groups and try encourage settlement.

That is one of the reasons we have put some money in this next budget. One of the things we would like to put together are two pamphlets. One is for the arbitrators, so that where we see consistent errors in application of the Back Pay Act and some other things, we would set out what the parameters are that we use against which they should make a judgment.

A second one is to help the parties understand their rights and responsibilities under the law.

Mr. **Roybal**. Supposing you found that in a case that has been arbitrated, that you have concluded the arbitrator has made some errors because he is not well trained. Can that then be appealed to the court?

Ms. **McKee**. No. The arbitration cases really cannot.

Mr. **Roybal**. Cannot.

JUDICIAL REVIEW

Mr. **Roybal**. What cases can be appealed to the Federal courts?

Ms. **McKee**. The negotiability cases and the Unfair Labor Practice cases.

Mr. **Roybal**. I suppose that once it gets there, the courts do not really overturn those cases, do they?

Ms. **McKee**. Well, yes, they do.

Mr. **Roybal**. What percentage?

Ms. **McKee**. It is a very mixed record in the Federal sector. I think, there is a variety of reasons. It is a new program. It is only ten years old, so a lot of definition is coming along here. Secondly, the case can be taken to any one of the Federal Circuit courts, and, again, in one or another place we may do better or worse.

Then I think there is a third element. A lot of courts have a very difficult time understanding when a Federal agency is arguing against a Federal agency.

Mr. **Roybal**. Yes.

Ms. **McKee**. We do better when we are in court against the unions. They can understand that. But why is the Department of Labor here or the Department of HHS here against the Federal Labor Relations Authority? They have a hard time with that concept. So they may give more deference.

Mr. **Roybal**. Mr. Skeen.

Mr. **Skeen**. Thank you, Mr. Chairman. I apologize for not being here. I am trying to cover two bases at one time, but that is not unusual around this place.

Ms. **McKee**. I used to be an AA up here, so I understand well.

REDUCTION IN BACKLOG

Mr. **Skeen**. Oh, you did? You have arbitrated my case then. I appreciate that.

Let me ask you a question about your backlog, and then I want to go back to this arbitration again.

What is your backlog now, and what is the prospect of getting it taken care of and getting it current?

Ms. **McKee**. As of the end of February, we had 357 cases in backlog. We have a goal of eliminating—We have a goal of issuing all decisions within 180 days of receipt. The first 60 days can often be taken up with filings. Party one files, the second one has a chance to answer, and then the first one can answer the second one, and, finally, we make sure that all of the papers are there.

In reality, oftentimes, we get arbitration cases out in four months, and the more difficult cases out in the six-month period.

Mr. **Skeen**. Three-fifty-seven?

Ms. **McKee**. That's 357.

Mr. **Skeen**. You have reduced it considerably from what you had last year.

Ms. **McKee**. Yes.

Mr. **Skeen**. You had some new positions.

Ms. **McKee**. Yes. These are our two new members.

Mr. **Skeen**. Welcome aboard.

Ms. **McKee**. And they have helped us get out 189 cases by the end of February.

Mr. **Skeen**. You seem to have done very well, because you had a 1400 case backlog last year, something in that area, when you came before us.

Ms. **McKee**. It was not that high, but it was growing exponentially.

Mr. **Skeen**. Not that high? Well, we exaggerate a little bit here.

Ms. **McKee**. Yes. That's good.

Mr. **Skeen**. It looks better for appropriations.

Ms. **McKee**. We are ready to get out the backlog by the end of the calendar year, and hopefully we will do it by the end of the fiscal year, but we put a January 1 deadline on it.

SOURCES AND QUALIFICATIONS OF ARBITRATORS

Mr. **Skeen**. You mentioned arbitrators and the troubles that you have, which result in a high number of appeals. Where do these arbitrators come from that handle the cases away from Washington?

Ms. **McKee**. There are really probably two main sources. One is the Federal Mediation Conciliation Service which maintains a list of arbitrators, and anybody can write them and they present a list of seven to the two parties which strike off until they come to an agreement on the arbitrator they will use.

Mr. **Skeen**. What qualifications do you have to have to be an arbitrator?

Ms. **McKee**. They have to have—I used to chair the Arbitrator Review Board at the Federal Mediation, and they are very careful there. You have to present five case decisions to the agency, and we had a team of about eight of us, and we read everyone of those, and maybe by the third one, you begin to skim, but all of us covered the five decisions that those arbitrators had made, so that we knew——

Mr. **Skeen**. As an example of their work.

Ms. **McKee**. Example of their work, and so you knew they were acceptable in the marketplace, and that they could write something that was fairly credible.

Mr. **Skeen**. Are they attorneys, generally?

Ms. **McKee**. Mixed.

Mr. **Skeen**. Or mixed?

Ms. **McKee**. Yes. Some attorneys, some are not. They are trained in it. There are some major lead arbitrators that will take on like an intern, somebody who is ready to become an arbitrator, oftentimes.

Mr. **Skeen**. So it is kind of a homegrown field?

Ms. **McKee**. That's right.

Mr. **Skeen**. Yes.

Ms. **McKee**. And then there are some standards that the National Academy of Arbitrators has set in order to join their group. So then the other source is what is called Triple A, American Arbitration Association. That is another group where you can go, and they have a list of arbitrators as well. Then there are some that are just well-known in the field.

Mr. **Skeen**. How are they compensated?

Ms. **McKee**. By the parties.

Mr. **Skeen**. By the parties themselves?

Ms. **McKee**. Yes.

Mr. **Skeen**. It is not Federal money or anything in a Federal case or anything?

Ms. **McKee**. Well, I suppose a Federal agency compensates.

Mr. **Skeen**. Federal agency, but then you have an agency suing another agency, then they both chip in and pay an arbitrator? Is that right?

Ms. **McKee**. Yes, but we see only unions and management of a same agency, or a same facility.

EDUCATIONAL SERVICES

Mr. **Skeen**. I see. Do you do any kinds of educational services?

Ms. **McKee**. Yes. In that there are a number of organizations in the Federal sector, the Society of Federal Labor Relations Professionals has an annual conference here in Washington. We just all were there, and we have supplied speakers and sessions for their workshops, and our staffs go around.

Mr. **Skeen**. Employees, unions, and agencies?

Ms. **McKee**. Yes.

Mr. **Skeen**. All three categories.

Ms. McKee. And then their chapters around the country have meetings, and then there are a number of training events. Mr. Armendariz is going down to two back-to-back, one for the Air Force and one for Office of Personnel Management, running training sessions in the southwest. So we move around the country.

Ms. Koch. The General Counsel is attending that also.

Ms. McKee. Yes.

Mr. Skeen. Are you General Counsel?

Ms. Koch. Yes.

Mr. Skeen. Good. Very good. You will enjoy the southwest.

Ms. Koch. I'm sure. I was there last year at that same meeting.

Ms. McKee. I went last year, so some of the others are attending this year.

Mr. Skeen. Where do they hold it?

Ms. McKee. They have it in San Antonio.

Mr. Roybal. Not in New Mexico, San Antonio.

Mr. Skeen. Well, the Patron Saint is San Antonio.

Ms. McKee. So there are a number of events around the country that are associated with labor-related agencies.

Mr. Skeen. You carry on these.

Ms. McKee. We need to do more, and that is some of the money that we have put in for this next year's budget.

Mr. Skeen. For this next year.

Ms. McKee. It is time that we get out. I think the parties that are around the Washington area are pretty schooled and skilled, but when you get out——

Mr. Skeen. It sounds as if your big trouble is in the field.

Ms. McKee [continuing]. And you get out to the hinterlands, beyond the Beltway, unless they are major defense facilities, military or something, it is a little less skilled, and could use our help in better understanding what they should be doing. Hopefully we will cut down——

Mr. Skeen. It is better than drawing pistols at high noon or something.

Ms. McKee. That's it.

Mr. Skeen. That's the way we used to settle up.

I thank you for your responses. Thank you, Mr. Chairman.

RELATIONSHIP BETWEEN AUTHORITY AND GENERAL COUNSEL

Mr. Roybal. Thank you, Mr. Skeen.

Ms. McKee, one last question, as a matter of curiosity, more than anything else. How does the General Counsel fit into this operation?

Ms. McKee. The General Counsel is the part of the agency that looks at all of the Unfair Labor Practice charges that come into her office, and that is the major work of the nine regional offices. There are probably 6,000 charges that come into her staff around the country.

Then, after they are looked at, an attempt is made to settle, always. If the case is not settled, the General Counsel's office brings the charge to the administrative law judge, and then that can be appealed to us.

So it is a separate but equal——

Ms. **Koch**. I would be happy to speak to this, if I could.

Ms. **McKee**. Yes.

Ms. **Koch**. The General Counsel operates as a prosecutor, and therefore maintains a very independent identity with parties, with the public, in order to assure that that independence is maintained, because the Authority ultimately adjudicates the complaints that we bring forward.

So what we do is we receive the Unfair Labor Practice charges. This coming year we anticipate about 7,000 of them.

Mr. **Roybal**. You receive them from where?

Ms. **Koch**. From individuals, labor organizations, and agencies.

Mr. **Roybal**. I still do not know exactly where the general counsel comes in.

Ms. **Koch**. General Counsel has the statutory authority to investigate and prosecute those charges.

Mr. **Roybal**. All right. He serves then as the prosecutor?

Ms. **Koch**. Yes.

Mr. **Roybal**. You are the——

Ms. **McKee**. We are an Appellate Court.

Mr. **Roybal** [continuing]. The Appeals Court.

Ms. **McKee**. Yes. Right.

Mr. **Roybal**. So anything that is done up to that time, then, is appealed to you?

Ms. **McKee**. Yes. We sit like the Appellate Court.

Mr. **Roybal**. Now there must be a backlog on this. Can you tell the committee what kind of backlog?

Ms. **Koch**. In the Unfair Labor Practice?

Mr. **Roybal**. First of all, in the investigative function.

Ms. **Koch**. It takes approximately between 75 to 120 days to do an average case.

Mr. **Roybal**. What about the adjudication function?

Ms. **Koch**. That takes much, much longer, and often we are at the mercy of the administrative law judges who schedule the hearings. We submit the complaint and say we have investigated this, we have been unable to have the parties reach a settlement, which we try to do. In fact, in all but 15 percent of the cases, a settlement is reached before a complaint is issued.

ADMINISTRATIVE LAW JUDGES

Mr. **Roybal**. Administrative judges hold court all over the country, do they not?

Ms. **Koch**. They travel, yes. They are located here, physically, but they travel to hear these cases.

Mr. **Roybal**. So one has to wait until they go to a particular city before anything is done with regard to that?

Ms. **Koch**. Yes. They schedule—Because we have such a very relatively tiny travel budget, they try to schedule 12 in one location.

Mr. **Roybal**. But they must be travelling all the time.

Ms. **Koch**. They travel a lot.

Mr. **Roybal**. Yes.

Ms. **McKee**. There are some cases they are hearing here, but a lot of them are around the country.

Mr. **Roybal**. Mr. Armendariz, do you go to that court, or what is your function?

Mr. **Armendariz**. No, I do not go with the administrative law judges, I stay here.

Mr. **Roybal**. You stay right here in D.C.?

Mr. **Armendariz**. I stay right here.

Ms. **McKee**. The three of us sit as an Appellate Court here in Washington.

Mr. **Roybal**. You do not involve yourself in any other function except sitting as an Appellate Court?

Mr. **Armendariz**. That's right, I do.

Mr. **Roybal**. I understand the basic functions of all of these various agencies, but the jurisdictional and operational details are complicated.

Mr. **Armendariz**. It is complicated.

Mr. **Roybal**. It is complicated.

Mr. **Skeen**. You can chalk that up to educational programs.

Ms. **McKee**. We do have some—we have put together a few charts that show the flow of cases, and maybe we should send those over to you.

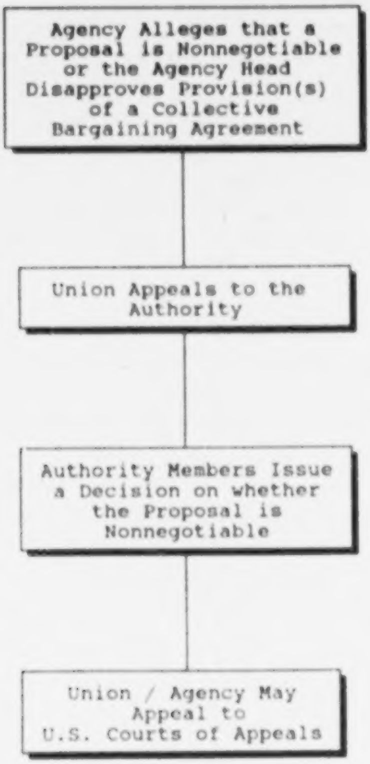
Mr. **Roybal**. Please do that. Then maybe we can submit, if you have them small enough, submit them so we can put them in the record.

Ms. **McKee**. Yes.

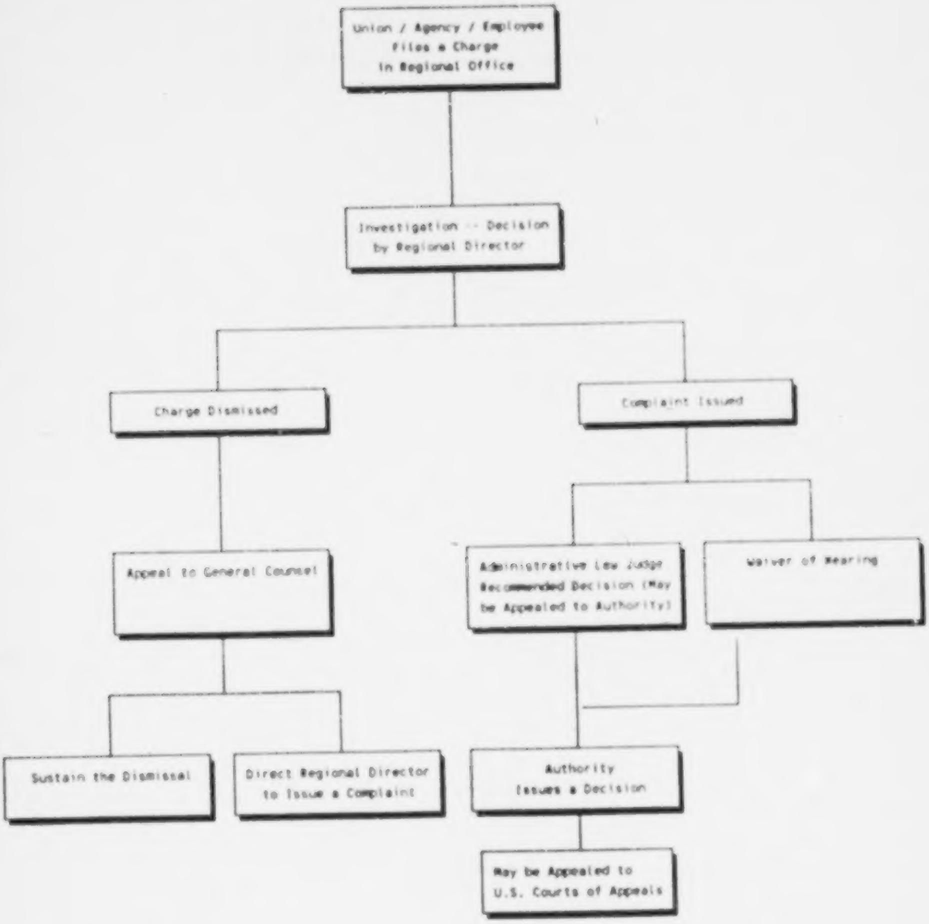
Mr. **Roybal**. I think it would be wise to do that so we will know just exactly how that thing really runs.

[The information follows:]

Federal Labor Relations Authority
Adjudication of
Negotiability Issues

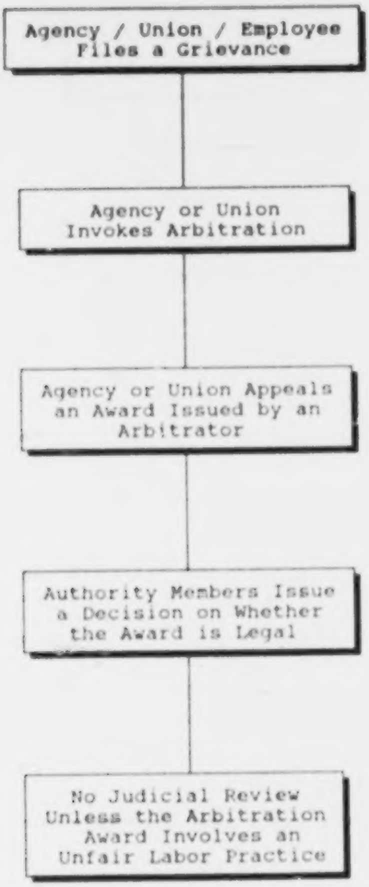

Agency Alleges that a Proposal is Nonnegotiable or the Agency Head Disapproves Provision(s) of a Collective Bargaining Agreement
Union Appeals to the Authority
Authority Members Issue a Decision on whether the Proposal is Nonnegotiable
Union / Agency May Appeal to U.S. Courts of Appeals

Federal Labor Relations Authority Adjudication of Unfair Labor Practice Cases

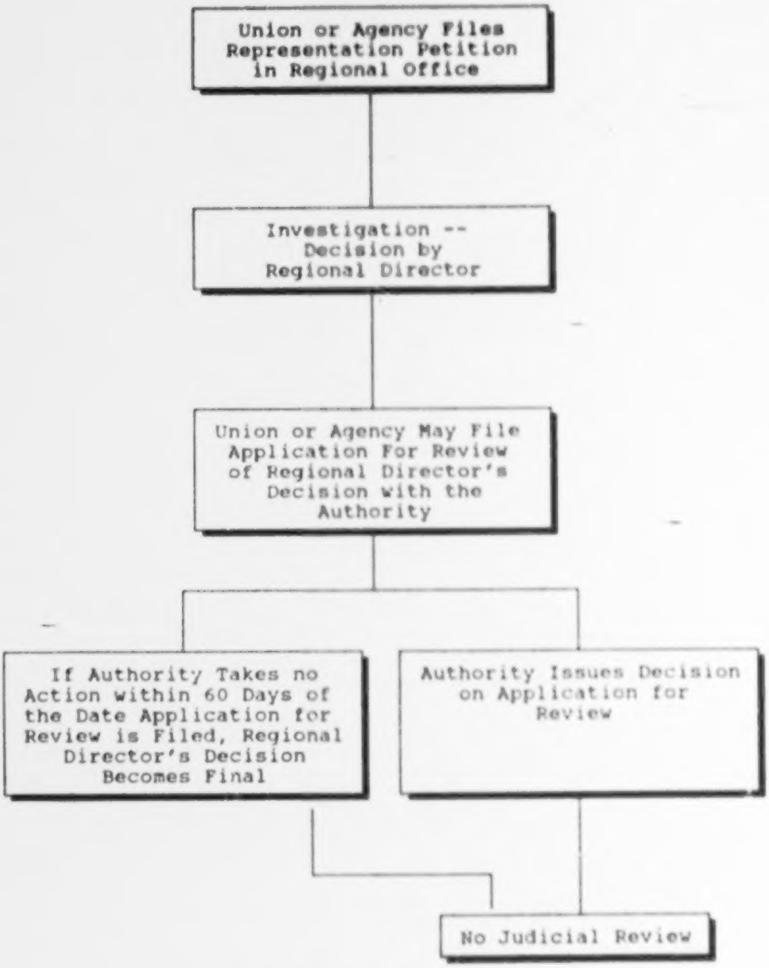

Union / Agency / Employee Files a Charge in Regional Office
Investigation -- Decision by Regional Director
Charge Dismissed
Complaint Issued
Appeal to General Counsel
Administrative Law Judge Recommended Decision (May be Appealed to Authority)
Waiver of Hearing
Sustain the Dismissal
Direct Regional Director to Issue a Complaint
Authority Issues a Decision
May be Appealed to U.S. Courts of Appeals

Note: ULP Charges / Complaints
may be settled at any stage

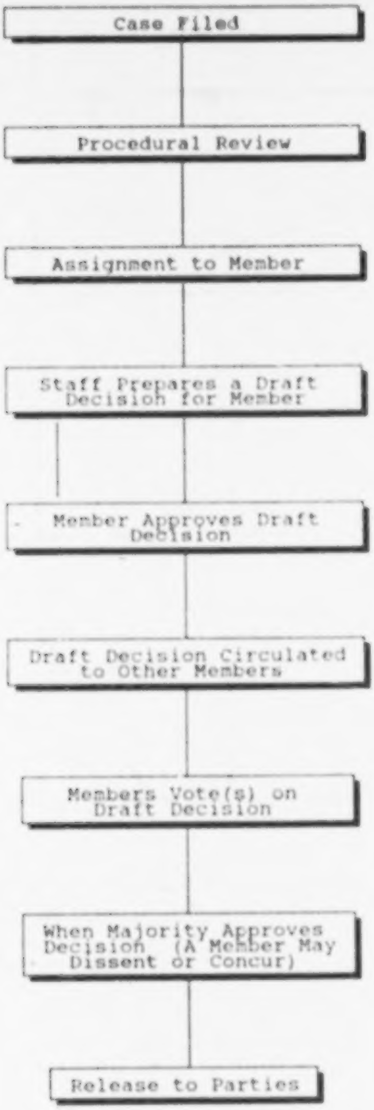
Federal Labor Relations Authority Adjudication of Appeals of Arbitration Awards


Agency / Union / Employee Files a Grievance
Agency or Union Invokes Arbitration
Agency or Union Appeals an Award Issued by an Arbitrator
Authority Members Issue a Decision on Whether the Award is Legal
No Judicial Review Unless the Arbitration Award Involves an Unfair Labor Practice

Federal Labor Relations Authority Adjudication of Representation Cases


Union or Agency Files Representation Petition in Regional Office
Investigation -- Decision by Regional Director
Union or Agency May File Application For Review of Regional Director's Decision with the Authority
If Authority Takes no Action within 60 Days of the Date Application for Review is Filed, Regional Director's Decision Becomes Final
Authority Issues Decision on Application for Review
No Judicial Review

Federal Labor Relations Authority
Internal Case Processing
Procedures


Case Filed
Procedural Review
Assignment to Member
Staff Prepares a Draft Decision for Member
Member Approves Draft Decision
Draft Decision Circulated to Other Members
Members Vote(s) on Draft Decision
When Majority Approves Decision (A Member May Dissent or Concur)
Release to Parties

Mr. **Roybal**. Yes, sir?

Mr. **Skeen**. Mr. Chairman, I would like to mention at this point that we have a class from St. Mary's School in Piscataway, Maryland, and Michael Antonovich is here to check and see how his mother works. We are delighted to have you and thank you for your kindness.

[Discussion off the record.]

Ms. **McKee**. This is Linda Lafferty. She is the Executive Director for the Federal Service Impasses Panel, which is a part-time panel in our agency. When management and labor are negotiating, if they come to an impasse, they can go to the panel and ask for assistance, whether it is to arbitrate, mediate, and come up with a decision.

Ms. **Lafferty**. Our chairman, Roy Brewer, lives in Tarzana, California, and he asked me to express his regrets that he was unable to be here, in part, because of our very small travel budget.

Mr. **Roybal**. They get you with the forehand and the backhand. I thank you for an outstanding job. Thank you very much.

[The justifications follow:]

Federal Labor Relations Authority

CONGRESSIONAL BUDGET SUBMISSION

Fiscal Year 1991

Appropriation Request

FEDERAL LABOR RELATIONS AUTHORITY
FISCAL YEAR 1991 CONGRESSIONAL BUDGET SUBMISSION

Table of Contents

Page No.

Appropriation Language

Salaries and Expenses 1

Personnel and Financial Requirements

Summary of Budget Request 2
Summary of Financial Changes. 3
Personnel Summary/Permanent Positions by Program Unit 4
Full-time Permanent Positions by Grade. 5
Program and Financing 6
Summary of Obligations by Object Class. 7
Detailed Cost Explanation by Object Class 8
Object Classification by FLRA Program Unit. 11

Legal Authorities

Legal Authorities 12

Table of Contents (Continued)

Program and Performance

Page No.

Overview of FLRA Functions. 13

Authority Members Decision Unit 15

Office of the General Counsel Decision Unit 23

Administrative Law Judges Decision Unit 41

Federal Service Impasses Panel Decision Unit. 43

Management and Administrative Support Decision Unit 45

Inspector General Decision Unit 47

FEDERAL LABOR RELATIONS AUTHORITY

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, including hire of experts and consultants, hire of passenger motor vehicles, rental of conference rooms in the District of Columbia and elsewhere; ($17,590,000) $18,443,000: Provided, that public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109. (Independent Agencies Appropriations Act, 1990.)

SUMMARY OF FY 1991 BUDGET REQUEST

(in thousands of dollars)

	1989 Actual	1990 Estimate	1991 Estimate	90-91 Change
Appropriation Request	$17,500	$17,590	$18,443	+ $853
Total Permanent Positions	261	256	257	+ 1

FY 1991 BUDGET REQUEST

SUMMARY OF FINANCIAL CHANGES

FY 1990 Estimated Obligations	$17,605,000
FY 1991 Estimated Obligations	$18,443,000
Change	$+ 838,000

Increase or Decrease from 1990-1991	Amount of Change
To provide funding for the annualized January 1990 pay raise, periodic/merit pay increases, projected January 1991 pay increases (general/Executive), associated benefit cost increases, and one additional position, offset by projected lapse.	$ 368,000
To reduce program travel as a result of projected staff vacancies offset by travel cost increases.	- 1,000
To cover increased space costs and, increased payments to the postal service, offset by decreased telecommunications costs	47,000
To reduce projected printing costs	- 23,000
To cover increased training, ADP maintenance and court reporting costs offset by decreased laboring service/renovation, and financial payroll support costs.	7,000
To cover increased costs associated with supplies/subscriptions and the purchase of training materials	12,000
To cover costs associated with the replacement of office equipment and the purchase of ADP equipment by the Office of the General Counsel.	428,000
Total change in FY 1991 versus FY 1990 budgets.	$ 838,000

PERSONNEL SUMMARY

	1989 Actual	1990 Estimate	1991 Estimate	90-91 Change
Total Number of Full-time permanent positions	261	256	257	1
Total compensable work years:				
Full-time equivalent employment	245	256	257	1
Full-time equivalent of overtime and holiday hours	--	--	--	--
Average ES salary	75,044	77,300	84,700	7,400
Average GS grade.	11.56	11.42	11.42	--
Average GS salary	44,585	46,133	46,879	746

DISTRIBUTION OF PERMANENT POSITIONS BY PROGRAM UNIT

Program Unit	1990 Staffing	1991 Staffing
Authority Members	76	77
Office of the General Counsel	133	133
Office of Administrative Law Judges	12	12
Federal Service Impasses Panel.	10	10
Management and Administrative Support . . .	23	23
Office of Inspector General	2	2
Total FLRA	256	257

DETAIL OF FULL-TIM PERMANENT POSITIONS

	1989 Actual	1990 Estimate	1991 Estimate
Executive Level IV.	1	1	1
Executive Level V.	3	3	3
Subtotal	4	4	4
ES-6.	1	1	1
ES-5.	2	2	2
ES-4.	2	2	2
ES-3.	9	9	9
ES-2.	6	6	6
ES-1	1	1	1
Subtotal	21	21	21
GS-18	1	1	1
GS-17	1	1	1
GS-16	8	8	8
GS/GM-15.	28	27	27
GS/GM-14.	41	40	40
GS/GM-13.	54	53	53
GS-12	11	10	10
GS-11	21	21	22
GS-10	1	1	1
GS-9.	10	9	9
GS-8.	22	22	22
GS-7.	17	17	17
GS-6.	10	11	11
GS-5.	8	7	7
GS-4.	1	1	1
Subtotal	236	231	232
Total Permanent Positions	261	256	257
Unfilled Positions. (end of year)	17	---	---
Total Permanent Employment. (end of year)	244	256	257

PROGRAM AND FINANCING

(in thousands of dollars)

	1989 Actual	1990 Estimate	1991 Estimate
Program by activities:			
Authority Members	$ 3,987	4,286	4,501
Office of the General Counsel	7,856	7,772	8,330
Administrative Law Judges	889	898	963
Federal Service Impasses Panel	653	606	619
Management and Administrative Support	4,145	3,925	3,927
Inspector General	2	103	103
Total direct program	17,532	17,590	18,443
Reimbursable program	38	15	--
Total obligations	$17,570	17,605	18,443
Financing:			
Offsetting obligations from: Federal funds	- 38	- 15	--
Unobligated balance lapsing	8		--
Budget authority	17,500	17,590	18,443
Budget authority (appropriation)	17,500	17,590	18,443
Relation of obligations to outlays:			
Obligations incurred, net	17,532	17,590	18,443
Obligated balance, start of year	1,714	1,901	2,341
Obligated balance, end of year	-1,901	-2,341	- 2,710
Adjustments in expired accounts	- 211	--	--
Outlays	17,134	17,150	18,074
Outlays:			
Outlays	17,134	17,150	18,074

SUMMARY OF OBLIGATIONS BY OBJECT CLASSIFICATION

(in thousands of dollars)

	1989 Actual	1990 Estimate	1991 Estimate	90-91 Change
Personnel compensation:				
Full-time permanent.	$10,861	$11,360	$11,659	$ 299
Other than full-time permanent	203	214	214	--
Other personnel compensation	346	357	362	5
Total personnel compensation	11,410	11,931	12,235	304
Personnel benefits: Civilian	1,534	1,652	1,716	64
Travel and transportation of persons. . .	597	586	585	- 1
Transportation of things.	2	1	1	--
Rental payments to GSA.	2,048	2,031	2,094	63
Communications, utilities, and other Rent	431	471	455	- 16
Printing and reproduction	144	265	242	- 23
Other services.	746	495	502	7
Supplies and materials.	196	159	171	12
Equipment	462	14	442	428
Total Obligations.	$17,570	$17,605	$18,443	$ 838

DETAILED COST EXPLANATION BY OBJECT CLASSIFICATION

PERSONNEL COMPENSATION (Object Classification 11), $12,246,000

This FY 1991 request provides funding for 257 full-time permanent positions.

	1989 Actual	1990 Estimate	1991 Estimate
Full-time permanent	$10,861,000	$11,360,000	$11,659,000
Other Than Full-time.	203,000	214,000	214,000
Other Personnel Compensation.	346,000	357,000	362,000
Total Personnel Compensation	$11,410,000	$11,931,000	$12,235,000

PERSONNEL BENEFITS (Object Classification 12), $1,716,000

This request is for the FLRA's mandatory contributions to the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Social Security program, the Federal Employees Group Life Insurance program, the Federal Employees Health Benefits program, the Federal Employees Injury Compensation program and the mandatory contributions to the Medicare Health Insurance program.

TRAVEL AND TRANSPORTATION OF PERSONS (Object Classification 21), $585,000

The FY 1991 travel estimate provides funds to each of FLRA's decison units. FLRA travel is related to and in furtherance of the processing of labor-management disputes arising among unions, employees and Federal agencies.

The operations of the Federal Labor Relations Authority require travel to the worksite involved in a dispute and other locations, to investigate or prosecute a case, to conduct a hearing or hold an election, or to represent the FLRA in litigation. The Federal Labor Relations Authority has nine regional offices located throughout the country. The existence of these regional offices reduces travel costs. The caseload of the Federal Labor Relations Authority is spread throughout the country.

TRANSPORTATION OF THINGS (Object Classification 22), $2,000

This estimate covers the cost of shipment of supplies and materials.

RENTAL PAYMENTS TO GSA (Object Classification 23.1), $2,094,000

This estimate represents payments made to the General Services Administration for the rental of office space.

COMMUNICATIONS, UTILITIES AND OTHER RENT (Object Classification 23.2), $455,000

This estimate includes payment to the General Services Administration (GSA) for the Federal Telecommunications System (FTS) as well as local telephone services ($356,000). Also included in this estimate are costs associated with the rental of office equipment, parking spaces and non-GSA space rentals ($6,000) and payments to the United States Postal Service ($93,000).

PRINTING AND REPRODUCTION (Object Classification 24), $242,000

This request covers the cost of work done by the Government Printing Office (GPO): the printing of case decisions, ballots and related election materials, printed forms, and other materials requiring professional printing. This request also covers the publishing of items in the Federal Register which are statutorily mandated.

OTHER SERVICES (Object Classification 25), $502,000

Major items of expenditure in this area include: (1) maintenance contracts ($177,000), (2) the FLRA's share of maintaining an employee health program ($22,000), (3) court reporting services ($55,000), (4) employee/client training ($38,000), (5) automated accounting/payroll/personnel services ($75,000), and (6) other miscellaneous services ($135,000) such as attorney fees, research services, personnel security investigations, and custodial/building maintenance.

SUPPLIES AND MATERIALS (Object Classification 26), $171,000

This estimate is for the purchase of normal office supplies and work materials, including subscriptions, periodicals, and additions or supplements necessary to keep the FLRA law libraries up-to-date as well as the purchase of labor-management related training materials.

EQUIPMENT (Object Classification 31), $442,000

This estimate provides for the normal and essential replacement of office equipment ($12,000). In addition funds are provided for the Office of the General Counsel to complete the overhaul of its ADP system which was initiated in FY 1989 ($430,000).

FY 1991 REQUEST

OBJECT CLASSIFICATION BY FLRA COMPONENT -- $18,443,000

(in thousands of dollars)

	Members	OGC	ALJ	FSIP	MAS	IG	Total	%
Total Personnel Compensation. . . .	$3,652	$6,270	$ 810	$ 482	$ 934	$ 87	$12,235	66.5
Personnel Benefits: Civilian.	504	907	102	72	119	12	1,716	9.3
Travel and Transportation of Persons .	55	435	47	43	4	1	585	3.1
Transportation of Things.	--	--		--	1	--	1	--
Communications, Utilities and Other Rent.	--	6	--	--	2,543	--	2,549	13.8
Printing and Reproduction. . . .	177	30	3	9	22	1	242	1.3
Other Services. . . .	68	153	--	3	277	1	502	2.7
Supplies and Materials	40	99	1	7	23	1	171	0.9
Equipment	5	430	--	3	4	0	442	2.4
Total Obligations	$4,501	$8,330	$ 963	$ 619	$ 3,927	$ 103	$18,443	100.0

LEGAL AUTHORITIES

The legal authorities of the Federal Labor Relations Authority are set forth in the following:

Reorganization Plan No. 2 of 1978, consolidated the central policy making functions in Federal labor-management relations under the Federal Labor Relations Authority, an independent agency. Previously, these functions had been divided between the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

Civil Service Reform Act of 1978, as amended by the Civil Service Miscellaneous Amendments Act of 1983, established the Federal labor-management relations program under a statute administered by the Federal Labor Relations Authority.

Panama Canal Act of 1979, expanded the jurisdiction of the Federal Labor Relations Authority to employees, including foreign nationals, of the Panama Canal Area and U.S. agencies in the Panama Canal Area.

Foreign Service Act of 1980, established a labor-management relations program for the members of the Foreign Service and established the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, which are supported by the Federal Labor Relations Authority.

Federal Employees Flexible and Compressed Work Schedules Act of 1982, as converted into permanent authority by the Act to Convert the Temporary Authority to Allow Federal Employees to Work on a Flexible or Compressed Schedule under Title 5, U.S. Code, into Permanent Authority, granted the Federal Service Impasses Panel jurisdiction over negotiation impasses regarding alternative work schedules.

OVERVIEW OF FLRA FUNCTIONS

The Federal Labor Relations Authority (FLRA) requests $18,443,000 and 257 full-time permanent positions in fiscal year 1991. These resources are required to administer effectively the statutory requirements of Title VII of the Civil Service Reform Act of 1978, the Federal Service Labor-Management Relations Statute. 5 U.S.C. §§7101 - 7135. In addition, the FLRA must provide full support to the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel in connection with the implementation of Chapter 10 of the Foreign Service Act of 1980.

The FLRA was established to administer Title VII of the Civil Service Reform Act of 1978 and to serve as a third-party neutral in the resolution of labor-management disputes arising among unions, employees and Federal agencies. The effective resolution of these labor-management disputes has an important impact on the operations of the Government. These disputes arise in nearly all agencies of the Executive branch, the Library of Congress and the Government Printing Office. These agencies are located throughout the U.S. and overseas. Further, the FLRA is charged with resolution of labor-management disputes among all employees, both U.S. citizens and foreign nationals, of the Panama Canal Area.

The Authority Members provide leadership in establishing policies and guidance relating to matters under Title VII of the Civil Service Reform Act of 1978. Specifically, the Authority is empowered to: (1) determine the appropriateness of units for labor organization representation;
(2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit; (3) otherwise administer the provisions relating to the according of exclusive recognition to labor organizations; (4) prescribe criteria and resolve issues relating to the granting of national consultation rights; (5) resolve issues relating to determining compelling need for agency rules and regulations; (6) resolve issues relating to the duty to bargain in good faith; (7) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment;
(8) conduct hearings and resolve complaints of unfair labor practices; (9) resolve exceptions to arbitrators' awards; and (10) take such other actions as necessary and appropriate to effectively administer the provisions of Title VII of the Civil Service Reform Act of 1978.

The General Counsel and the Regional Directors have responsibilities which are set forth in the Federal Service Labor-Management Relations Statute and responsibilities which have been delegated by the Authority. The General Counsel has statutory responsibility to (1) investigate alleged unfair labor practices arising under the Statute and the Foreign Service Act of 1980, and (2) file and prosecute unfair labor practice complaints arising under those statutes. The General Counsel reviews and decides all appeals of decisions of Regional Directors not to issue unfair labor practice complaints. The Statute also provides the General Counsel with direct authority over and responsibility for all employees in the Office of the General Counsel including employees of the General Counsel in the Authority's regional offices. Regional Offices are located in Boston, New York, Washington, D.C., Atlanta, Chicago, Dallas, Denver, Los Angeles, and San Francisco. Subregional offices are located in Philadelphia and Cleveland.

Regional Directors are appointed by the Authority. In addition to their responsibilities to investigate and prosecute unfair labor practice complaints, Regional Directors have been delegated authority by the Authority to (1) determine whether a group of employees constitutes an appropriate bargaining unit, (2) conduct investigations and provide hearings in representation matters, (3) determine whether a question of representation exists and direct elections, and (4) supervise or conduct secret ballot elections and certify the results of those elections. Applications for review of Regional Director decisions in representation matters may be filed with the Authority.

The Federal Service Impasses Panel (FSIP), an entity within the FLRA, assists Federal agencies and unions representing Federal employees in resolving impasses which arise in labor negotiations. The FSIP assists the parties through informal meetings, factfinding and, if necessary, arbitration. The professional staff aids the FSIP members by promptly investigating requests for assistance, bringing about informal settlements, conducting factfinding and arbitration hearings, and drafting reports and recommendations as well as binding decisions for the FSIP members. Further, the staff supports the Foreign Service Impasse Disputes Panel in resolving negotiation impasses arising under the Foreign Service Act of 1980.

FEDERAL LABOR RELATIONS AUTHORITY
AUTHORITY MEMBERS DECISION UNIT

Overview and Functions: The mission of the Federal Labor Relations Authority is to provide leadership in establishing policies and guidance relating to labor-management relations in the Federal sector. The major responsibilities of the Chairman and Authority Members are to decide cases which arise under the Federal Service Labor-Management Relations Statute, resolve major policy issues, prescribe regulations governing labor-management relations and the processing of cases before the Authority, and disseminate information through publications, seminars, and training conferences. The Authority Members decision unit includes the Offices of the Chairman and Members, the Office of the Solicitor, the Office of Case Control, and the Office of Information Resources and Research Services.

The Office of the Chairman and Members are responsible for the preparation of decisions in four principal subject matter areas: representation, negotiability, arbitration, and unfair labor practices. The attorneys and labor relations professionals who are assigned to these staffs review case filings, research relevant issues, and draft decisions for review by the Chairman and Members.

The Agency is authorized by the Statute to be represented by its own attorneys in judicial proceedings (except some proceedings before the United States Supreme Court). Representation is provided by attorneys in the Office of the Solicitor. The Office of the Solicitor also provides legal advice to the Chairman, Members and General Counsel on administrative and other matters.

The Office of Case Control is responsible for receiving and filing briefs and other documents submitted by the parties, reviewing case submissions for compliance with the Authority's regulations, and issuing decisions which have been approved by the Chairman and Members. The Office of Case Control also is responsible for responding to requests for information from parties and members of the public concerning the status of cases.

The Office of Information Resources and Research Services is responsible for the Authority's computerized case tracking system. The Office also publishes the Authority's subject matter indices, digests, and citators, and prepares bound volumes of case decisions for publication by the Government Printing Office.

FY 1991 Objectives:

1. Decide all arbitration cases within 120 days of receipt. Decide all other cases within 180 days of receipt.
2. Continue to improve the quality and consistency of Authority decisions.
3. Participate in and sponsor meetings, training events, and conferences among representatives of Federal agencies and unions to encourage labor-management cooperation.
4. Initiate and participate in training events and conferences designed to clarify the rights and responsibilities of Federal agencies, unions, and the FLRA under the Federal Service Labor-Management Relations Statute.
5. Create and distribute two pamphlets discussing the rights and responsibilities of Federal agencies and unions under the Federal Service Labor-Management Relations Statute.

FY 1989 Accomplishments: The Authority's goal is to decide all cases within 6 months of the date each case is filed. This goal was reached in February 1988 and was sustained through the remainder of FY 1988.

The Authority continued to maintain this self-imposed case processing objective into the first month of FY 1989. The Authority closed 101 cases during October 1988, which was the last month the Authority was able to issue decisions on the merits. The resignation of former Chairman Jerry L. Calhoun on November 1, 1988, created two vacancies in the Authority's membership. Because of the two vacancies, the Authority lacked a quorum of Members with which to decide cases. Therefore, no decisions which required review by the Authority Members were issued between November 1, 1988, and September 30, 1989.

Despite the lack of a quorum, the Authority received 555 cases during FY 1989. The Authority closed 239 cases, far fewer than the 585 closings the Authority projected for FY 1989. Of these 239 cases, 138 were dismissed for procedural defects by the Acting Executive Director pursuant to delegated authority because the cases were not filed timely or otherwise were not in compliance with the Authority's regulations.

There is a direct connection between the number of cases which are decided by the Authority and the number of Authority cases for which judicial review and/or enforcement is sought. In FY 1989 47 Federal court actions were initiated concerning Authority decisions. During FY 1988, by contrast, 309 actions were initiated.

A large number of Authority decisions are awaiting disposition in Federal court. At the end of FY 1989, there were 377 cases involving Authority decisions pending in court. This number of cases is only 31 fewer than were awaiting judicial decision at the end of FY 1988.

Chairman Jean McKee and other officials of the Authority spoke at many conferences and symposia during FY 1989 in furtherance of the Authority's responsibility to provide leadership and guidance regarding Federal labor relations. Authority officials participated in conferences sponsored by the Society of Federal Labor Relations Professionals, the Public Administration Forum, the Equal Employment Opportunity Commission, the Federal Mediation and Conciliation Service, the Office of Personnel Management, and the United States Air Force, among others.

Impact of FY 1989 Accomplishments: Because a quorum of Authority Members did not exist to enable the Authority to decide cases between November 1, 1988, and September 30, 1989, an inventory of "overage" cases has developed. The Authority considers any case which has not been issued within 6 months of filing to be overage. On September 30, 1989, 332 cases were pending before the Authority for more than 6 months.

Many of the cases pending before the Authority involve issues which have Government-wide impact. For example, numerous cases are pending concerning the extent to which Federal agencies must bargain over the initiation of drug-testing programs as well as the procedures by which testing may occur. Other significant issues include (1) whether or not a Federal agency must engage in collective bargaining before issuing general reduction-in-force notices to employees, (2) the extent of a Federal union's duty to fairly represent employees who are not members of the Union, and (3) the standards by which alleged waivers of statutory rights will be judged.

In order to achieve timely case processing and to provide guidance to the parties on the important issues facing Federal agencies and unions, the Authority's goal is to regain a "current inventory" (no cases pending for more than 6 months) by December 31, 1990. To do so, 756 cases must be closed during FY 1990. The Authority estimates that it will close 295 arbitration cases, 229 negotiability cases, 193 unfair labor practice cases, and 4 miscellaneous cases in FY 1990.

The issuance of 756 cases during FY 1990 is a challenging goal. The Authority has closed more than 750 cases only twice during its 11-year history. The Authority is committed to its 6-month goal and will concentrate all its efforts on deciding cases during FY 1990. Given the number of cases to be decided and current staffing levels, other initiatives will be pursued only to the extent that the initiatives do not detract from case-processing activities. Of necessity, therefore, activities which could provide long-range benefits to the Federal labor relations community, such as training, conferences, publications, and alternative dispute resolution experiments, must be deferred until FY 1991.

In FY 1991 the Authority projects closing 701 cases: 254 arbitration, 224 negotiability, 189 unfair labor practice, 31 representation, and 3 miscellaneous. In addition, the Authority plans to pursue more proactive labor-management activities. Specifically, the FLRA intends to: (1) initiate and participate in training events and conferences designed to clarify rights and responsibilities of Federal agencies, unions, and the FLRA under the Federal-Service Labor-Management Relations Statute, (2) create and distribute two labor-management pamphlets and (3) participate in and sponsor meetings, training events, and conferences among representatives of Federal agencies and unions to increase labor-management cooperation.

Initiate and Participate in Training Events to Clarify Rights and Responsibilities of Federal Agencies: Providing training to agency and union representatives, especially at the local level, to clarify rights and responsibilities under the Federal Service Labor Management Relations Statute would likely decrease the number and complexity of disputes, enhance the parties' abilities to reach amicable settlements of disputes, and improve the quality of the parties' submissions to the Authority. The benefits of this program objective would, in turn, decrease the number of cases filed with the Authority and provide better records for the Authority to adjudicate the cases which are filed. Furthermore, achievement of these results could lead to fewer resources being devoted at the agency, union, Authority and court level to matters which have been resolved already.

Training events will be carefully designed to both reach the necessary parties and to provide the information which is most useful to those parties. In addition, many of the representatives who most need training in resolving and, if necessary, litigating labor disputes are not located in Washington, D.C. To yield the most benefits, therefore, training will be conducted throughout the United States, in addition to Washington, D.C.

Create and Distribute Two Labor-Management Pamphlets: The Authority's experience under the Statute shows that there is need for written materials providing guidance involving arbitration and negotiability cases.

In the arbitration area, there are three problems. First, the statutory scheme governing review of arbitration awards is complex. The Authority has jurisdiction to review some awards. Other awards are reviewable by the Equal Employment Opportunity Commission, the Merit Systems Protection Board, and/or the U.S. Court of Appeals for the Federal Circuit. Although this statutory scheme has not changed since the enactment of the Civil Service Reform Act, confusion continues over which avenues of appeal are available in individual cases. As a result of this confusion, the Authority is asked to review many arbitration awards over which it has no jurisdiction. The resources required for the Authority to adjudicate these cases are, therefore, diverted from the necessary resolution of other disputes. A pamphlet which includes clarifying the Authority's jurisdiction to review arbitration awards would reduce the number of exceptions which are filed to awards over which the Authority has no jurisdiction, thereby enabling the Authority and the parties to better use their resources.

Second, the grounds on which arbitration awards may be overturned by the Authority are narrow. Specifically, awards may be overturned only if the awards conflict with applicable law or regulation, or if the awards are deficient on narrow "private sector grounds," which include such matters as fraud and bias on the part of the arbitrator. Although an award may not be overturned because it allegedly conflicts with a provision in a collective bargaining agreement, agencies and unions continue to file exceptions to arbitration awards on this basis. Written guidance on the grounds on which arbitration awards are reviewable would likely reduce the number of these filings.

Third, there are numerous recent Authority and judicial decisions addressing findings which must be made by an arbitrator in certain cases. For example, arbitral awards of backpay and attorney fees must comply with specific requirements in the Back Pay Act. An arbitration pamphlet which includes clarifying and discussing these specific requirements would enable the parties and arbitrators to focus on relevant issues and, in the long run, would reduce the number of deficient arbitration awards and the litigation which results from them.

In the negotiability area, a pamphlet which addresses both procedural and substantive aspects of negotiability appeals is necessary. In the procedural area, the Authority and the courts have held that the parties must address specific factors in connection with proposals which are alleged by a union to constitute "appropriate arrangements." The parties continue, however, to file submissions in these cases which do not address these specific factors. The lack of necessary information hampers the Authority's ability to make decisions in these cases. If it is necessary to require the parties to file supplemental submissions addressing the specific factors, resolution of the dispute is further delayed.

In the substantive area, written guidance on the parameters of the obligation to bargain is needed. In particular, clarification and explanation is needed concerning (1) the factors used to determine whether a proposal concerns a condition of employment; (2) the nature and extent of the management rights provision of the Statute; and (3) the criteria on which the Authority determines whether there is a compelling need for an agency regulation. Clarification and explanation of these matters would enable the parties to identify pertinent issues and provide clearer records for Authority decisions.

Participate in and Sponsor Events to Increase Labor-Management Cooperation: Experience in the private and public sectors makes clear that cooperative relationships between labor and management are beneficial to both parties and to increased effectiveness and efficiency of the organization. Cooperative efforts -- ranging from quality circle experiments to profit-sharing ventures -- increase employee morale and productivity, reduce litigation, and, in general, promote the amicable, nonadversarial expeditious resolution of disputes. Experiments in labor-management cooperation in the Federal sector have been undertaken by some parties. Heretofore, however, the interconnection between the statutory collective bargaining rights and responsibilities in the Federal sector and labor-management cooperative efforts have not been fully addressed by the Authority. More effort in this area is needed. Because the Authority is the independent, neutral agency charged by Congress with providing leadership in the Federal sector, it is appropriate for the Authority to assume a leadership role in this area.

Facilitation of the use of cooperative efforts by Federal agencies and unions would be enhanced by face-to-face discussions among the Authority Members and representatives of agencies and unions. In addition to communicating encouragement to the parties to engage in cooperative efforts, discussions should focus on past and current experiments to determine the factors which contributed to their success or failure. Further, any statutory or regulatory impediments to those efforts should be explored so that appropriate changes may be considered.

Many of the labor-management relationships which could benefit the most from discussions concerning cooperative efforts involve "local" (as opposed to "national") agency and union representatives. Many of those representatives are unlikely to attend meetings held in Washington, D.C. Therefore, the Authority Members would hold five meetings among agency and union representatives in five geographically separate locations: (1) the western United States, (2) the northeast, (3) the south, (4) the midwest, and (5) Washington, D.C. Holding meetings in the "field" would maximize participation and would, thereby, yield the most benefits.

In addition, haphazard or unstructured meetings would likely discourage rather than encourage efforts. Accordingly, face-to-face discussions concerning cooperative efforts will be designed carefully to both encourage the participation of as many representatives as possible and to structure the meetings so as to allow the representatives to participate in a positive way. Agencies with specialized expertise and experience in labor-management cooperation would be included in both the planning and execution phases of this project.

Output/Workload Measures for Authority Case Processing
FY 1988 - 1991

Workload Projections:

	FY 1988 Actual	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
New Case Intake				
Arbitration	204	197	194	194
Negotiability	161	176	180	180
Representation.	20	21	25	25
Unfair Labor Practices. . . .	228	160	148	148
Miscellaneous	7	1	2	2
Total Intake	620	555	549	549
Cases Closed				
Arbitration	191	52	295	254
Negotiability	196	87	229	224
Representation.	16	8	35	31
Unfair Labor Practices. . . .	209	92	193	189
Miscellaneous	6	0	4	3
Total Closed	618	239	756	701
Cases Pending at End of Year				
Arbitration	75	221	120	60
Negotiability	76	165	116	72
Representation.	7	20	10	4
Unfair Labor Practices. . . .	88	156	111	70
Miscellaneous	2	3	1	0
Total Pending.	249	565	358	206

Further, the meetings will be recorded and summaries of suggestions and other information will be made available to participants and others, including professionals in the field, for study and analysis.

Authority Members Resource Summary:

	1989 Actual	1990 Estimate	1991 Estimate
Full-time Permanent Positions.	75	76	77
Budget Authority ($000).	$3,987	$ 4,286	$ 4,501

FEDERAL LABOR RELATIONS AUTHORITY
Decision Unit Overview
Office of the General Counsel

The Office of the General Counsel is responsible for investigating all allegations of unfair labor practices and all representation petitions filed with the Federal Labor Relations Authority under Title VII of the Federal Service Labor-Management Relations Statute and the Foreign Service Act of 1980. This office has final authority over the issuance and prosecution of all complaints and unfair labor practice charges. The General Counsel is responsible for managing, directing, and supervising all employees in the Regional Offices. The General Counsel reviews all appeals of decisions where Regional Directors refused to issue complaints. The Authority Members delegated to the Regional Directors responsibility for conducting all representation case elections and certifying the results to the parties. Further, the Regional Directors have the delegated responsibility for conducting hearings in all representation cases and for issuing final Decisions and Orders based on records established in these hearings. The Office of the General Counsel manages a caseload of approximately 7,000 new cases annually. Of these 7,000 cases, approximately 6,750 cases are resolved to final disposition at the level of the Office of the General Counsel. Approximately 250 cases of its total caseload are referred to other components of the FLRA for final disposition.

Programmatic Objectives:

1. Provide advice, assistance and review of all phases of field office performance to ensure adherence to case handling standards; ensure that complex cases are dealt with on a uniform basis throughout the country and in conformance with general policies; and ensure that the decisions in these cases are rendered expeditiously.

2. Investigate and take dispositive action on all allegations of unfair labor practices under the Federal Service Labor-Management Relations Statute and under the Foreign Service Labor-Management Relations Statute.

3. Where voluntary settlement cannot be obtained, issue complaints in meritorious unfair labor practice charges performing research required to ensure that the factual and legal standards of the General Counsel are being applied.

4. When requested, ensure complete review of appeals from refusals of Regional Directors to issue complaints on ULP charges. The review will include assurance that the factual and legal standards of the Office of the General Counsel are being uniformly applied in all Regions.

5. Investigate and take initial dispositive action on all petitions involving questions of representation. Supervise or conduct all elections and certify the results of elections to the parties. Conduct all hearings necessary in representation petitions, and issue final Decisions and Orders in a timely and efficient manner.

During FY 1989, a transition from one General Counsel to another took place. On the basis of studies and reviews of the state of the Office, the current General Counsel established several goals directed toward improving the efficiency and quality of the Office and its work.

Long-Range Goals

1. To create a regional office structure which will more expeditiously and more economically process the workload.

2. To improve the overall quality of the written decisions and complaints issued by the Office of the General Counsel.

3. To adopt procedures among the Regional Offices which will ensure greater consistency in processing cases.

4. To obtain state-of-the-art word processing equipment for all employees to enhance the efficiency and quality of the work of the Office of the General Counsel.

To meet the organizational objectives as established by Statute and to achieve the management improvements reflected in the goals listed above, the Office of the General Counsel (OGC) is requesting $8,330,000 and 132.5 full-time equivalent work years for FY 1991. This total includes a request of $7,900,000 for normal operations and $430,000 special request for upgrading of word processing and case tracking capabilities within the OGC.

Significant Features of the FY 1991 Budget Request

Reorganization

Due to a required reduction of 5 full-time equivalent (FTE) workyears in FY 1990, a reorganization of the OGC headquarters was recently conducted. The effect of the reorganization was to create a trimmer headquarters staff, with each staff member having clearly delineated responsibilities. The organization has clearer lines of authority because, among other changes, the General Counsel eliminated a three-person team of managers of Regional Offices and placed direction of the Regional Offices under one position. More importantly for budget purposes, the headquarters has been reduced from 18 positions in FY 1989 to 15 positions for FY 1990. Thus, the headquarters has absorbed 60 percent of the 1990 FTE reduction to minimize the impact on the OGC's ability to process cases in the Regional Offices. The headquarters staff has been reduced from 26 positions in 1986 to its current level of 15 positions, a reduction of 42.3 percent.

This budget request was not prepared with a specific regional alignment in mind, but was prepared making several general staffing assumptions. Regardless of the regional configuration, it is assumed that 1 supervisory position and 2 secretarial positions will be required to support 7 agent positions. Further, 1 secretary and 1 Regional Director will be required for every Regional Office. All supervisory staff are treated as working supervisors. For budget purposes, they are assumed to carry a full productivity workload. Of the 132.5 full-time equivalent workyears allocated to the Office of the General Counsel, 117.5 are allocated to the Regional Offices. During this same 5-year period, case intake increased an average of 6 percent annually. During the 5-year period from FY 1985 through FY 1989 (the last 5 years for which actual intake data is available), case intake in the Office of the General Counsel increased by more than 50 percent per positions, using all authorized positions.

Upgrade of ADP Capabilities

The last two items on the list of the OGC long-range goals concern the need for upgrading its ADP capabilities. The Office of the General Counsel was using word processing and data processing equipment which was over 10 years old. Because the equipment is no longer manufactured, maintenance had not only become expensive, but sometimes impossible. As serious problems occurred, equipment was cannibalized and parts were used to keep the remaining equipment running.

The greatest drawbacks to the equipment, however, were their inefficiency and lack of flexibility. Case tracking data cannot be retrieved for current time status. This is because case tracking data must be batched on a monthly basis and consolidated for manual entry at the OGC Headquarters. At the present time, it takes approximately 3 weeks to develop and analyze monthly case tracking trends. This means that for a particular case the headquarters status report may be as much as 7 weeks behind the actual case status of the case.

In addition, the equipment has neither the capacity nor the capability for the OGC to utilize the improved software which is available on the market. The word processing software was inefficient and far more difficult to use than the user-friendly software that is now available. Most spreadsheets developed for monitoring caseloads, case processing and budget expenditures are manually created because the equipment was not compatible with available spreadsheet software. The equipment was not designed to interact with the new generations of ADP equipment. We had no capability, therefore, to access computerized legal research systems.

During FY 1989, the Office of the General Counsel took initial steps to reach the goal of obtaining state-of-the-art technology. With lapsed funds accruing by virtue of some positions remaining vacant for short periods, we were able to contract for the purchase of 55 IBM-compatible 386 personal computers, and 15 laser printers. Each secretary will soon receive a new computer and one additional computer will be installed in each Regional Office for use by the professional staff. The entire National Office staff has been provided with a personal computer as part of this phase.

Although no additional enhancements are projected for FY 1990, our budget request for FY 1991 anticipates completion of our goal of improving our ADP capabilities. The next phase is to expand the base of computers purchased last fiscal year to include everyone in the Office of the General Counsel. The third phase would be to network together all the personal computers within the Office of the General Counsel. The final stage will be the addition of a mini-computer as part of the network developed in the prior stage of upgrade.

Witness Travel Expenses

One additional recent development has had a direct impact on the budget for the Office of the General Counsel. The Court of Appeals for the District of Columbia Circuit has held that the FLRA regulations compelling Federal employer agencies to pay travel and *per diem* expenses for their employees to appear at FLRA proceedings exceeds the congressional grant to the Authority under 5 U.S.C. § 7131(c), *Department of the Air Force, Sacramento Air Logistics Center v. Federal Labor Relations Authority*. The consequence of this decision is that the Office of the General Counsel will have to bear the expense of the travel and *per diem* of Federal employees who appear at proceedings on behalf of the FLRA. This is a cost which in the past has always been distributed among all Federal employer agencies. The totality of this expense will now be the liability of the Office of the General Counsel. We anticipate the need to cover this additional expense from current travel allocations. Only after experience will we be able to analyze the total impact on our budget.

Production and Case Management

After remaining relatively stable during the 5-year period from FY 1982 through FY 1986, the ULP case intake began to increase sharply beginning in FY 1987. An increase of 11.7 percent in intake was experienced in FY 1987, an increase of 5.3 percent was seen in FY 1988 and an additional increase of 5.3 percent occurred in 1989. Increases of 5 percent are projected for fiscal years 1990 and 1991.

During the 5-year period from FY 1986 through 1990, the total staff in the Office of the General Counsel was reduced by 20.5 percent. Assuming a 5 percent increase of intake in FY 1990, case intake during the same 5-year period will have increased from a rate of 34.11 cases per authorized position to 54.07 cases per authorized position, an increase of 58.5 percent.

The workload for the Office of the General Counsel is divided into five distinct categories as follows:

a) management of the Office of the General Counsel;

b) unfair labor practice investigations and dispositive actions;

c) unfair labor practice complaints - settlements and hearings;

d) unfair labor practice appeals; and

e) representation case dispositive actions, elections, hearings and post-hearing Decisions and Orders.

As in the past, priorities will continue to be assigned to the processing of the representation caseload. This workload is projected to comprise 4 percent of the total intake in fiscal year 1991, while the unfair labor practice (ULP) caseload is projected to comprise 96 percent if the total intake for the Office of the General Counsel.

This budget request assumes a 3 percent increase in productivity for all positions in FY 1990 and again in FY 1991. This increase in productivity is shown by the increased numbers of cases processed per position. In total, the FY 1991 workload estimates contained in this budget request assume productivity increases of approximately 10 percent over fiscal year 1989 levels.

Relocation Allocations

Decreasing resources in budget and personnel have required careful redistribution of the resources available. Even under the best of circumstances approximately 97 percent of the OGC allocation has been required to pay personnel compensation, personnel benefits and travel associated with case processing activities. The remaining 3 percent is absorbed by necessary obligated costs such as non-GSA rental space, equipment maintenance contracts, court reporting services and essential supplies. There is virtually no discretionary money.

As in FY 1990, our projected expenditures for FY 1991 do not include any funding for:

a) our employee recognition program and employee training;

b) the program of clientele outreach, which includes travel funds to meet with the clientele in nonconfrontational situations and the printing of materials used to inform our clientele of our current actions and policies;

c) on-site audits of all regional offices' case processing to ensure compliance with OGC policies and standards for quality.

We hope to ameliorate the affect of our lack of resources to accomplish these functions and obligations by using alternative cost-free methods, where available; by absorbing them into other functions; or by curtailing the functions. Thus, for example, outreach activities will be limited to those instances where they can be combined with other programmatic functions such as investigations or hearings.

Impact of Budget on Programmatic Functions

The projected status and impact on the five distinct workload areas is summarized below.

MANAGEMENT OF OGC

Major Objective

Provide advice, assistance and review of all phases of field office performance to ensure adherence to case handling standards; to ensure that complex cases are dealt with on a uniform basis throughout the country and in conformance with general policies; and to ensure that the decisions in these cases are rendered expeditiously.

a) Develop systematic methods for all aspects of case processing activities, including time and quality standards for all stages of case processing activity.

b) Ensure that factual and legal standards are applied uniformly and that charges which are meritorious under those standards are litigated before the Authority, absent settlement.

c) Monitor the processing of all cases to identify potential or actual case backlogs, and to remedy these backlogs before they become serious.

d) Track all cases through stages of processing, including: dispositive action, appeal, compliance, request for advice, trial or hearing, and election as appropriate.

e) Ensure the effective and efficient utilization of all resources allocated to the Office of the General Counsel, including the monitoring and control of all funds made available for its use.

f) Provide all technical, secretarial, library and docketing functions associated with the administration of the Regional Offices and immediate Office of the General Counsel.

g) Respond to all inquiries made on the status of cases filed with the Office of the General Counsel, including requests made under the Freedom of Information Act.

As in 1990, we will make reductions in this workload area by limiting on-site audits of regional offices to a few offices where there are specific problems requiring immediate attention. This approach conserves personnel resources and travel funds. The disadvantage is that we do not become aware of the problems until they manifest themselves in a larger way. Training and development programs for regional office staffs will be postponed until fiscal year 1992.

We will continue to review the work products of the regions on a regular basis and we will continue to provide advice and guidance to the staffs of the regional offices as in the past.

Emphasis in fiscal year 1991 will be placed at remedying years of neglect of ADP equipment and work measurement methods by implementing a new case tracking system and new technology for accomplishing the work performed by the regional office staffs.

1) Providing each employee with a personal computer will enhance the ability of our employees to produce written products more quickly. Each year of the past several years we asked employees to increase production. Assuming a 5 percent increase in intake and productivity in FY 1990, the overall rate of productivity per position will have increased by 58.5 percent during the 5-year period beginning in FY 1986 and ending in FY 1990. We will have required an additional 10.5 percent increase by the end of FY 1991. By demanding steady increases in production, we must be prepared to provide the staff with the resources with which to meet these demands. The reduction of staff has resulted in a 10 percent reduction of secretarial staff in our Regional Offices since the beginning of FY 1987. This reduction in secretarial staff has shifted the burden to the professional staff in the field, increasing the need to obtain personal computers for all staff so that the workflow from professional staff to secretarial staff can be streamlined to avoid duplication of effort.

2) The quality and appearance of the written products would be vastly improved.

3) New computers will enable us to link with computerized legal research systems. Use of such software allows the attorneys to review the latest court decisions, including those not yet published in official case reporters, and to verify the accuracy and completeness of the precedent on which they rely.

4) By networking all computers, headquarters and all Regional Offices will be linked for electronic mail, messages, and administrative reports such as case load summaries.

5) Caseload data may be input as cases develop. This will give us the capability of monitoring workloads by employee, by Regional Office, or nationwide in current time. This capability will assist the OGC in allocating resources in a timely manner.

6) Eventually, by utilization of software on the marketplace, the computers can be programmed to provide administrative reports (payroll, financial spreadsheets, time and attendance reports, organization and position level reports, and retirement analysis reports, etc.), thus improving our ability to monitor and allocate resources and better assess vulnerabilities.

7) We will also be able to obtain automated tracking and control of all office correspondence, internal assignments and external reporting requirements, thus ensuring better time controls on workload.

UNFAIR LABOR PRACTICE WORKLOAD

Investigations and Dispositive Actions

Our objectives are to:

a) Investigate and take dispositive action on all allegtions of unfair labor practices under the Federal Service Labor-Management Relations Statute and under the Foreign Service Labor-Management Relations Statute;

b) Take 95 percent of all ULP dispositive actions within 120 days of the receipt of a sufficient charge;

c) Obtain voluntary settlement in 90 percent of all charges determined to have merit; strive to obtain voluntary settlement prior to complaint in 65 percent of all charges determined to have merit; and

d) Obtain withdrawals in 60 percent of all charges determined to be without merit.

A total of 7,109 unfair labor practice charges are projected to be received during FY 1991. Productivity levels of 129 cases per position are assumed for this workload, an increase of 6 cases per position (3 percent) over projected levels for FY 1990 and 11 cases per position (9.3 percent) over actual levels reached in FY 1989. Positions allocated to this workload will be reduced by two workyears from FY 1989 levels.

A total of 6,708 dispositive actions are projected to be taken at this level in FY 1991, 401 cases (5.6 percent) below intake for the same period. A total of 2,330 cases are projected to be awaiting investigation at the end of FY 1991, 20 percent over the projected pending workload at the beginning of the fiscal year and 898 cases (62.7 percent) above the current pending caseload.

This pending caseload is equivalent to a delay of 3.5 months in the initiation of an investigation, and would be equivalent to a total timeframe of 135 days from the receipt of a charge to initial dispositive action. At this level, case processing timeframes will be 80 percent above current processing timeframes.

Complaint Issuance

Our objectives are to:

a) Issue complaints in unfair labor practice charges which are meritorious and voluntary settlement cannot be obtained;

b) Perform research required to ensure that the factual and legal standards of the General Counsel are being applied;

c) Conduct hearings in ULP complaints within 60 days of complaint issuance;

d) Issue complaints, when needed, within 75 days of receipt of a sufficient charge; and

e) Obtain post-complaint settlement where complaints are issued.

Productivity levels of 94 cases per position are assumed for this workload, an increase of 5 cases over levels for FY 1990 and 10 cases (12 percent) per position over actual levels reached in FY 1989.

In this area, 1,006 complaints are projected to be issued and 980 complaint dispositions are projected to be taken. Included in this total are 735 complaints where voluntary settlements are projected to be obtained and 245 complaints where hearings are projected to be held. A total of 286 complaints are projected to be awaiting hearing at the end of FY 1991. At this level, the median age for complaints, measured from issuance to hearing or settlement, is projected to be 75 days (2.5 months).

ULP Appeals

Our objectives are to:

a) Ensure complete review of appeals from the refusals of Regional Directors to issue complaints on ULP charges;

b) Ensure that the factual and legal standards of the Office of the General Counsel are being uniformly applied in all Regions; and

c) Complete review of appeals within 60 days of receipt of the appeal, and within 30 days of receipt of the file from the Regional Office.

Productivity levels of 158 cases per position are assumed for this workload, an increase of 8 cases over projected levels for FY 1990 and 17 cases (12 percent) per position over actual levels reached in FY 1989. All positions are projected to be fully funded in FY 1991.

A total of 496 appeals are projected to be received. This is slightly higher than the total of 472 appeal dispositions projected for FY 1990. A total of 202 appeals are projected to be pending at the end of FY 1991, 25 percent higher than the comparable total projected for the end of FY 1990. A backlog of 2 months is projected in the appeals workload at this level.

REPRESENTATION WORKLOAD

Investigation and Dispositive Actions

Our objectives are to:

a) Investigate and take initial dispositive action on all petitions involving questions of representation;

b) Complete investigation and issue dispositive actions within 45 days off receipt of petitions; and

c) Take 95 percent of all dispositive actions within 90 days of receipt of petition.

Because the processing of representation cases receives priority in the Regional Offices, a total of 2.75 workyears are projected to be required for this workload area in FY 1991. It is estimated that each workyear will account for 125 cases, 6 cases over the projected level for FY 1990.

A total of 344 dispositive actions are projected to be taken on representation petitions during FY 1991, slightly below the projected intake level. A backlog of cases is projected which is more than twice the existing backlog level.

Elections

Our objectives are to:

a) Supervise or conduct all elections and certify the results of elections to the parties;

b) Conduct all hearings necessary in representation petitions, and issue final Decisions and Orders in a timely and efficient manner;

c) Hold representation case hearings within 30 days of the notice of hearing;

d) Hold elections within 30 days of consent election agreements, and certify results of parties within 2 weeks of election; and

e) Issue post-hearing Decisions and Orders within 75 days of close of hearing.

A total of 2 workyears are projected to be required for this workload area in FY 1991. It is estimated that each workyear will account for 93 cases in FY 1991, 4 cases over the projected level for FY 1990 and 9 cases (10.5 percent) over 1989 levels.

Elections or hearings are projected to be scheduled in 185 representation petitions during FY 1991, about the same as totals projected for fiscal years 1989 and 1990. Dispositions are projected to be taken in 186 petitions during FY 1991, essentially equal to cases scheduled. Virtually no backlogs are projected to develop in these workload areas during FY 1991, continuing a pattern seen throughout the experience of the Office of the General Counsel.

	1989 Actual	1990 Estimate	1991 Estimate
Full-time Permanent Positions.	138	133	133
Budget Authority ($000).	$7,856	$ 7,772	$ 8,330

Workload Summary:
Initial Unfair Labor Practice Caseload

	FY 1988	FY 1989	Estimate FY 1990	Estimate FY 1991
Carryover on 10/01	1,153	1,370	1,432	1,929
New Cases Received	6,123	6,451	6,770	7,109
Total Caseload	7,276	7,821	8,202	9,038
Disposition Actions	5,906	6,389	6,273	6,708
Total Cases Pending	1,370	1,432	1,929	2,330
Work-in Progress*	(492)	(532)	(522)	(559)
Backlog (Cases)	(878)	(900)	(1,407)	(1,771)
Backlog (Months)	1.75	1.75	2.75	3.00
Productivity Per Position	111	118	123	129
Staff-Years Available	53	54	51	52
Staff-Years Required	53	54	54	54

Workload Summary:
Secondary Unfair Labor Practice Caseload --
Prosecutions and Settlements

	FY 1988	FY 1989	Estimate FY 1990	Estimate FY 1991
Carryover on 10/01	182	266	343	260
Complaints Issued	882	969	940	1,006
Total Caseload	1,064	1,235	1,283	1,266
Complaint Dispositions	798	892	1,023	980
Complaints Litigated	(259)	(154)	(256)	(245)
Complaints Settled	(539)	(738)	(767)	(735)
Total Pending Complaints	266	343	260	286
Non-Processable Work	(110)	(121)	(127)	(125)
Work-in-Process	(70)	(74)	(85)	(82)
Backlog (Cases)	(86)	(148)	(98)	(79)
Backlog (Months)	1.25	2.0	0.50	1.0
Productivity Per Position	80	89	93	98
Staff-Years Available	10	10	11	10
Staff-Years Required	10	10	11	10

Workload Summary:
Secondary Unfair Labor Practice Caseload --
Appeals

	FY 1988	FY 1989	Estimate FY 1990	Estimate FY 1991
Carryover on 10/01	135	98	101	150
Appeals Received	484	475	472	496
Total Appeals Caseload	619	573	473	646
Appeals Disposition	521	472	423	444
Total Appeals Pending	98	101	150	202
Non-Processable Work	(31)	(28)	(28)	(30)
Work-in-Process	(22)	(18)	(16)	(17)
Backlog (Cases)	(45)	(55)	(106)	(155)
Backlog (Months)	1.50	0.75	1.25	2.00
Productivity Per Position	136	134	141	148
Staff-Years Available	4	3.5	3	3
Staff-Years Required	4	4.0	3	3

Workload Summary:
Initial Representation Caseload

	FY 1988	FY 1989	Estimate FY 1990	Estimate FY 1991
Carryover on 10/01.	39	39	54	70
New Cases Received.	336	328	344	361
Total Caseload.	375	367	398	431
Disposition Actions	336	313	328	344
Total Cases Pending	39	54	70	87
Work-in Progress.	(26)	(27)	(27)	(27)
Backlog (Cases)	(13)	(27)	(43)	(60)
Backlog (Months).	0.50	1.0	1.5	2.25
Productivity Per Position	112	89	119	125
Staff-Years Available	3.0	3.5	2.75	2.75
Staff-Years Required.	3.0	3.5	2.75	2.75

Workload Summary:
Secondary Representation Caseload --
Hearings and Elections

	FY 1988	FY 1989	Estimate FY 1990	Estimate FY 1991
Carryover on 10/01.	26	28	25	53
Elections/Hearings Scheduled.	200	183	185	185
Total Caseload.	226	200	210	238
Election/Hearing Dispositions.	198	158	176	186
Total Elections/Hearings.	28	25	53	52
Pending	(17)	(15)	(16)	(16)
Work-in-Process	(11)	(13)	(15)	(16)
Backlog (Cases)	(--)	(--)	(22)	(20)
Backlog (Months).	--	--	1	1
Productivity Per Position	79	79	88	93
Staff-Years Available	2.5	2.0	2.0	2.0
Staff-Years Required.	2.5	2.0	2.0	2.0

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges Decison Unit

Function: The primary function of the Office of Administrative Law Judges (OALJ) is to hear unfair labor practice cases prosecuted by the FLRA's General Counsel and render timely decisions.

1991 Program Objective: Render quality decisions within 180 days or less from the issuance of a complaint.

Resource Summary:

	1989 Actual	1990 Estimate	1991 Estimate
Full-time Permanent Positions.	12	12	12
Budget Authority ($000).	$ 889	$ 898	$ 963

ADMINISTRATIVE LAW JUDGES

Workload Projections

	FY 1989 ACTUAL	FY 1990 ESTIMATE	FY 1991 ESTIMATE
Cases Carried Over From Prior Year	450	551	509
Cases Opened.	1,069	930	930
Total Caseload.	1,519	1,481	1,439
Cases Closed Before Hearing . .	666	664	675
Cases Closed At Hearing	150	156	157
Cases Closed By Decision. . . .	152	152	156
Total Cases Closed.	968	972	988
Cases Pending At End of Year. .	551	509	451
Awaiting Hearing.	450	415	360
Awaiting Decision	101	94	91

Federal Labor Relations Authority
Federal Service Impasses Panel Decision Unit

The Federal Service Impasses Panel (FSIP), an entity within the Federal Labor Relations Authority, assists Federal agencies and unions representing Federal employees in resolving impasses which arise in labor negotiations. The FSIP's mission is to operate an efficient and effective system for resolving negotiation impasses. The system emphasizes voluntary dispute resolution, while bringing finality in the form of arbitration to collective bargaining between agencies and exclusive representatives. Within this framework the FSIP encourages the development and application of sound labor-management principles through assistance to agency, union, and other labor relations practitioners.

The FSIP serves as a substitute for the strike and lockout in the Federal sector. The FSIP has no control over its caseload because requests filed by unions and/or employers must be investigated. However, investigations are completed only after FSIP confers with Federal Mediation and Conciliation Service (FMCS) as to the extent of its mediation efforts. In the absence of timely resolution of impasses, the collective bargaining process is weakened with potential harmful effects on productivity and morale and, consequently, effective government.

If mediation efforts by the FMCS prove unsuccessful, the FSIP assists the parties through informal meetings or factfinding. When necessary, the FSIP orders the dispute resolved through the issuance of FSIP Decisions and Orders or arbitration awards. In addition, the FSIP must approve before the parties adopt a procedure for using a private arbitrator. The professional staff aids the members of the FSIP by promptly investigating requests for assistance, bringing about informal settlements, conducting factfinding and arbitration hearings, and drafting reports and recommendations as well as binding decisions for the FSIP members. Further, the staff supports the Foreign Service Impasse Disputes Panel in resolving negotiation impasses arising under the Foreign Service Act of 1980.

During FY 1991, the FSIP will seek to maintain the median time for processing all cases by completing the investigations of requests for assistance within 15 days. As a result of this initiative, it is projected that the number of case dispositions will increase approximately 17 percent between FY 1990 and FY 1991.

Federal Service Impasses Panel
Resource Summary:

	1989 Actual	1990 Estimate	1991 Estimate
Full-time Permanent Positions.	10	10	10
Budget Authority ($000).	$653	$606	$619

Workload Projections:

	1989 Actual	1990 Estimate	1991 Estimate
Impasses Received.	247	300	310
Carryover (From prior year).	75	94	177
Total Intake	322	394	487
Impasse Resolutions.	228	217	250
Total Pending.	94	177	237

FEDERAL LABOR RELATIONS AUTHORITY
Management and Administrative Support Decision Unit

Function: Management and administrative support functions include the full spectrum of support services provided to all FLRA components and offices. Support functions provided include: planning, budget formulation and execution, personnel management, equal employment opportunity, security, accounting, payroll, procurement, driving, mail, space management, forms management, records management, occupational safety and health, as well as internal control reviews to ensure fiscal integrity, regulatory compliance, and efficient operations.

FY 1991 Program Objectives:

1. Analyze, review and improve the delivery of administrative services to enhance effectiveness, efficiency, responsiveness, and accountability.

2. Conduct an evaluation of the organization's ADP requirements to ensure that current technological needs of the Agency are addressed and that a plan is implemented to address Agency requirements.

3. Explore additional opportunities for cross-servicing arrangements for administrative activities to make the most effective use of resources.

4. Provide for training and developmental opportunities for staff in order to enhance organizational effectiveness, increase productivity, and better serve the needs of our clients.

FY 1989 Program Highlights:

FY 1989 was a transition year for the Management and Administrative Support Unit because of the transitions and vacancies in the positions of the Chairman, Members, and the General Counsel. Plans were made and implemented to facilitate the transition and support of the new appointees to these positions. In order to increase the efficiency of the FLRA many accomplishments were achieved during FY 1989. A few highlights are set forth below.

1. The Office of Inspector General was created pursuant to the Inspector General Act Amendments of 1988, Public Law 100-504. The Inspector General for the FLRA was recruited, selected and began employment.

2. In recognition of the need for all Federal Agencies to conserve financial resources and maximize human resources, reviews of the management and organizational structure of the Authority were conducted. Implementation of the results of these reviews will occur in FY 1990 and FY 1991.

3. The analysis and review of alternatives to provide the Agency with an integrated payroll, personnel and accounting system was completed. The planning process to achieve conversion to the Department of Interior's Federal Financial System in FY 1990 was completed.

4. Office space was reduced by approximately 1,300 square feet in addition to the space reductions which occurred previously. Several offices have been converted to systems furniture to contain and reduce space costs.

5. A Drug Free Workplace Plan was developed. This plan has been approved by the Department of Justice.

6. A Travel Management Center Program was established to make more effective use of resources and better control travel costs.

7. The Diners Club Government Card Program was implemented to improve Agency cash management.

8. A new program of attorney recruitment was developed and implemented.

Resource Summary:

	1989 Actual	1990 Estimate	1991 Estimate
Full-time Permanent Positions	24	23	23
Budget Authority ($000)	$4,145*	$3,925*	$3,927*

*Note. - Includes agency-wide support services such as space, Federal telecommunications services, commercial telephones, rental and maintenance of equipment, Federal Employees Compensation, health services contracts, postal payments and accounting, payroll/personnel support. In FY 1991 the cost of these activities is projected at $2,654,000.

FEDERAL LABOR RELATIONS AUTHORITY
Inspector General Decision Unit

Function: The Office of the Inspector General has several significant functions which include:

1. conducting and supervising audits, operations reviews, and investigations relating to the functions of the FLRA;
2. providing leadership, coordination and recommendations for activities that promote economy, efficiency and effectiveness within the FLRA's programs and operations;
3. preventing and detecting fraud, waste and abuse in the FLRA's programs and operations; and
4. keeping the Chairman and the Congress fully informed about problems and deficiencies related to the FLRA's programs and operations and the necessity for, and progress of, corrective actions.

FY 1991 Program Objectives:

1. Enhance the integrity, efficiency, and effectiveness of the Office of the Inspector General.
2. Implement a comprehensive audit policy which ensures that activities carried out by the FLRA promote economy and efficiency and which detects waste, fraud and abuse in FLRA programs and operations.
3. Implement a comprehensive investigations policy which preserves the integrity of the FLRA and which includes investigating and reporting to the Chairman on allegations of waste, fraud and abuse. Monitor progress made implementing corrective actions.
4. Ensure that all necessary reports are made to the Chairman and Congress in a timely manner.

Resource Summary:

	1989 Actual	1990 Estimate	1991 Estimate
Full-time Permanent Positions.	1	2	2
Budget Authority ($000).	$ 2	$ 103	$ 103

TUESDAY, MARCH 13, 1990.

OFFICE OF SPECIAL COUNSEL

WITNESSES

MARY F. WIESEMAN, SPECIAL COUNSEL
ERIN McDONNELL, DEPUTY SPECIAL COUNSEL
WILLIAM E. CALDWELL, DIRECTOR FOR MANAGEMENT

Mr. ROYBAL. The committee will now hear from the Office of the Special Counsel. I am asking Ms. Wieseman to proceed in any manner that you may desire.

Ms. WIESEMAN. Thank you, Mr. Chairman. It is a pleasure to be here this morning to testify on behalf of the Office of Special Counsel before this committee. Before I begin, I would like to introduce my colleagues here at the table.

To my left is Erin McDonnell. She is the Deputy Special Counsel. To my right is William Caldwell. He is the Director for Management at the Office of Special Counsel.

In the interest of time, I would ask that my prepared statement be admitted into the record. I would just briefly describe our budget requests.

Mr. ROYBAL. Without objection.

Ms. WIESEMAN. Thank you.

[The information follows:]

STATEMENT OF

MARY F. WIESEMAN
SPECIAL COUNSEL
OFFICE OF SPECIAL COUNSEL

BEFORE THE

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE
AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 13, 1990

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR INVITING ME TO DISCUSS THE BUDGET REQUEST FOR THE OFFICE OF SPECIAL COUNSEL (OSC) FOR FISCAL YEAR (FY) 1991. CONSISTENT WITH THE ADMINISTRATION'S BUDGET, THE OSC IS REQUESTING BUDGET AUTHORITY FOR FY 1991 IN THE AMOUNT OF $6,608,000, WITH 101 FULL-TIME EQUIVALENT (FTE) POSITIONS. THIS REPRESENTS AN INCREASE OF $1,501,000 OVER THE FY 1990 APPROPRIATION OF $5,107,000, AND AN INCREASE OF 15 FTE POSITIONS FROM THE CURRENT FTE LEVEL OF 86.

REORGANIZATION PLAN NUMBER 2 OF 1978 ESTABLISHED THE OFFICE OF THE SPECIAL COUNSEL ON JANUARY 1, 1979. THE CIVIL SERVICE REFORM ACT (CSRA) OF 1978, WHICH CAME INTO EFFECT ON JANUARY 11, 1979, ENLARGED ITS FUNCTIONS AND POWERS. THE OFFICE OPERATED AS THE AUTONOMOUS INVESTIGATIVE AND PROSECUTIVE ARM OF THE MERIT SYSTEMS PROTECTION BOARD

(MSPB) UNTIL 1989. IN MARCH OF 1989, CONGRESS PASSED THE WHISTLEBLOWER PROTECTION ACT (WPA) OF 1989, WHICH BECAME EFFECTIVE ON JULY 9 OF THAT YEAR. THE WPA MADE THE OFFICE OF THE SPECIAL COUNSEL AN INDEPENDENT AGENCY WITHIN THE EXECUTIVE BRANCH, SEPARATE AND APART FROM THE MSPB, AND RENAMED IT THE OFFICE OF SPECIAL COUNSEL. UNDER THE NEW LAW, THE OSC RETAINED ITS BASIC INVESTIGATIVE AND PROSECUTIVE FUNCTIONS, AND ITS ROLE IN LITIGATING CASES BEFORE THE MSPB.

THE NEW LAW SUBSTANTIALLY AMENDED THE CSRA IN ORDER TO STRENGTHEN PROTECTIONS AGAINST REPRISAL FOR FEDERAL EMPLOYEES WHO DISCLOSE WRONGDOING IN THE GOVERNMENT AND TO ENHANCE THE ABILITY OF THE OSC TO ENFORCE THOSE PROTECTIONS. UNDER THE CSRA, AS AMENDED, THE PRINCIPAL RESPONSIBILITIES OF THE OSC CONTINUE TO BE--

- THE INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL PRACTICES DEFINED BY LAW AT 5 U.S.C. §2302(b) (ESPECIALLY REPRISAL FOR WHISTLEBLOWING), AND OTHER ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE OR REGULATION, AND THE INITIATION OF CORRECTIVE AND DISCIPLINARY ACTIONS WHEN SUCH REMEDIAL ACTIONS ARE WARRANTED;

- THE ENFORCEMENT OF HATCH ACT PROVISIONS ON POLITICAL ACTIVITY; AND

- THE PROVISION OF A SECURE CHANNEL THROUGH WHICH FEDERAL EMPLOYEES MAY DISCLOSE INFORMATION EVIDENCING VIOLATIONS OF LAW, RULE OR REGULATION (SUCH AS FRAUD), GROSS

WASTE OF FUNDS, GROSS MISMANAGEMENT, ABUSE OF AUTHORITY, OR A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY, WITHOUT DIVULGING THE EMPLOYEE'S IDENTITY UNLESS THE EMPLOYEE CONSENTS.

THE PRIMARY RESPONSIBILITY OF THE OSC IS THE RECEIPT AND INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL PRACTICES. OSC HAS NO DISCRETION AS TO WHETHER IT WILL INVESTIGATE A MATTER. THE LAW REQUIRES THAT "THE SPECIAL COUNSEL SHALL RECEIVE ANY ALLEGATION OF A PROHIBITED PERSONNEL PRACTICE AND SHALL INVESTIGATE THE ALLEGATION TO THE EXTENT NECESSARY TO DETERMINE WHETHER THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A PROHIBITED PERSONNEL PRACTICE HAS OCCURRED, EXISTS, OR IS TO BE TAKEN." THE OSC'S GOAL IS TO DEAL PROMPTLY AND PROPERLY WITH EACH ALLEGATION AND DISCLOSURE RECEIVED BY OUR AGENCY. WE EMPHASIZE THE RESOLUTION OF ALL MATTERS AT THE EARLIEST POSSIBLE STAGE OF REVIEW THROUGH APPROPRIATE INVESTIGATION, INITIATION OF CORRECTIVE OR DISCIPLINARY ACTION WHEN THE EVIDENCE SUPPORTS THE NEED FOR SUCH ACTION, AND THE DISPOSITION OF NON-MERITORIOUS MATTERS OR MATTERS NOT WITHIN OUR AGENCY'S JURISDICTION.

THE WPA CREATED A NEW INDIVIDUAL RIGHT OF ACTION (IRA) BEFORE THE MSPB FOR EMPLOYEES ALLEGING REPRISAL FOR WHISTLEBLOWING. THE IRA IS AVAILABLE FOR NEW CATEGORIES OF EMPLOYEES AND NEW CLASSES OF PREVIOUSLY UNAPPEALABLE PERSONNEL ACTIONS. AN IRA MAY BE FILED WITH THE MSPB WITHIN 60 DAYS AFTER THE OSC NOTIFIES AN EMPLOYEE THAT CORRECTIVE ACTION WILL NOT BE SOUGHT, OR WITHIN 120 DAYS AFTER THE EMPLOYEE FILES A COMPLAINT WITH THE OSC, WHETHER OR NOT THE OSC HAS COMPLETED ITS

REVIEW. ALTHOUGH NOT REQUIRED BY THE WPA, THE OSC HAS INSTITUTED INTERNAL PROCEDURES IN FURTHERANCE OF ITS GOAL OF PROCESSING WHISTLEBLOWER REPRISAL COMPLAINTS THROUGH INVESTIGATION WITHIN 120 DAYS OF RECEIPT.

THE OSC HAS MADE THE TIMELY PROCESSING OF WHISTLEBLOWER REPRISAL ALLEGATIONS A PRIORITY FOR SEVERAL IMPORTANT REASONS. FIRST, IF AN AGENCY HAS TAKEN AN IMPROPER PERSONNEL ACTION AGAINST AN EMPLOYEE, THE GOVERNMENT SHOULD MOVE QUICKLY TO CORRECT IT. THE OSC HAS ENJOYED INCREASED SUCCESS IN RECENT YEARS IN ACHIEVING AGREEMENTS BY FEDERAL AGENCIES TO TAKE CORRECTIVE ACTIONS AFTER INVESTIGATION. A CONTINUATION OF THESE EFFORTS ON A TIMELY BASIS WILL AVOID EXPENSIVE, DISRUPTIVE, AND TIME-CONSUMING LITIGATION.

SECOND, IF A COMPLAINT DOES NOT PROVE TO BE MERITORIOUS AFTER INVESTIGATION, AND THE OSC EXPLAINS THE REASONS TO THE COMPLAINANT, SOME EMPLOYEES MAY DECIDE NOT TO PURSUE FRUITLESS, COSTLY LITIGATION BEFORE THE MSPB.

THIRD, IF EMPLOYEES WITH MERITORIOUS CASES FILE AN IRA WITH THE BOARD AND WIN, AGENCIES WILL BE REQUIRED TO PAY ATTORNEY FEES AND COSTS. TIMELY OSC ACTION WILL AVOID THESE ADDED EXPENSES.

THE ADDED RESPONSIBILITIES AND TIME LIMITS IMPOSED BY THE WPA REQUIRE ADDITIONAL STAFF TO FULLY MEET OUR OBJECTIVES UNDER THE NEW LAW. REALLOCATION OF OUR RESOURCES DURING THE FIRST QUARTER OF FY 1990 HAS HELPED IMPLEMENT THE OBJECTIVES OF THE ACT IN THE PROCESSING OF

WHISTLEBLOWER REPRISAL COMPLAINTS. AT THE SAME TIME, HOWEVER, THE NUMBER OF COMPLAINTS DURING THAT PERIOD INCREASED BY 22 PERCENT OVER THE SAME PERIOD A YEAR AGO, AND THE AVERAGE AGE OF PENDING MATTERS UNDER INITIAL REVIEW INCREASED FROM 70.3 DAYS TO 117.4 DAYS. THE AVERAGE AGE OF MATTERS UNDER INVESTIGATION AT THE END OF THE FIRST QUARTER OF FY 1990 WAS 279.3 DAYS. FOR THE REASONS I DESCRIBED BEFORE, IT IS IMPORTANT THAT THE OSC COMPLETE ITS PROCESSING OF WHISTLEBLOWER REPRISAL COMPLAINTS, AT LEAST THROUGH THE INVESTIGATION PHASE, WITHIN THE 120-DAY TIME PERIOD, REDUCE THE AGE OF ALL OTHER CASES TO ACCEPTABLE LEVELS, RESPOND EFFECTIVELY TO COMPLAINANTS GENERALLY, AND ENGAGE IN NECESSARY OUTREACH TO EDUCATE EMPLOYEES ABOUT WHISTLEBLOWING, PROHIBITED PERSONNEL PRACTICES, THE HATCH ACT, AND OTHER ACTIVITIES WITHIN THE JURISDICTION OF THE OSC. THE REQUESTED INCREASE IN THE OSC BUDGET IS BASED ON THE NEED TO MEET THESE REQUIREMENTS AND OBJECTIVES. WITHOUT THE REQUESTED INCREASES IN FUNDS AND STAFF, PROCESSING AND RESPONSE TIMES FOR NON-WHISTLEBLOWER REPRISAL MATTERS (APPROXIMATELY 80 PERCENT OF ALL COMPLAINTS) WILL CONTINUE TO DETERIORATE WHILE CURRENT STAFF STRIVES TO MEET THE 120-DAY REQUIREMENT FOR WHISTLEBLOWER REPRISAL MATTERS.

THIS CONCLUDES MY FORMAL STATEMENT WHICH, ALONG WITH THE BUDGET JUSTIFICATION, SUMMARIZES THE NEED FOR THE FY 1991 BUDGET REQUEST SUBMITTED BY THE PRESIDENT OF $6,608,000 AND 101 FTE POSITIONS.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU OR OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE AT THIS TIME.

OSC BUDGET REQUEST

Ms. **Wieseman**. The budget request for the Office of Special Counsel for Fiscal Year 1991 is $6,608,000. This is an increase of $1,501,000 over our current authorized appropriation for Fiscal Year 1990. This increase in funding, if approved, will permit us to add 15 positions, bringing our total authorized personnel level to 101 positions.

Our Agency has continued to achieve significant results in obtaining corrective actions on behalf of Federal employees, especially whistleblowers, who have been the victims of prohibited personnel practices. The recent enactment of the Whistleblower Protection Act, which became effective July 9, 1989, has enhanced legal protection for whistleblowers, and the ability of the Office of Special Counsel to enforce those protections.

INDIVIDUAL RIGHT OF ACTION

The Whistleblower Protection Act created a new individual right of action, an IRA as we call it, before the Merit Systems Protection Board for Federal employees, alleging that an adverse personnel action was taken because of their whistleblowing activities.

An IRA may be filed with the Board within 60 days after our agency notifies an employee that a corrective action will not be sought, or within 120 days after the employee files a complaint with the Office of Special Counsel, whether or not our agency has completed its review.

OSC INTERNAL PROCEDURES

Although not required by the Act, the OSC has instituted internal procedures in furtherance of its goal of processing whistleblower complaints through investigation within 120 days of receipt. We have taken these steps to insure that any matter involving a whistleblower is resolved at the earliest possible opportunity and to minimize the need for expensive, time-consuming and duplicative litigation before the Board.

We have implemented these procedures by reallocating staff resources. This has resulted, however, in a deterioration in the processing time of non-whistleblower matters, which constitute approximately 80 percent of all of our complaints.

Approval of our funding requests will enable our agency to add sufficient staff to continue processing whistleblower matters in accordance with our procedures and the intent of the Whistleblower Protection Act. At the same time, increased staff should help us to arrest and improve the processing time of all matters involved with our agency.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions.

Mr. **Roybal**. Thank you, Ms. Wieseman. Ms. Wieseman, can you tell the committee how your agency inter-relates with the Merit Systems Protection Board?

Ms. **Wieseman**. I would be happy to, Mr. Chairman.

As of July 9, 1989, with the passage of the Whistleblower Protection Act, the Office of Special Counsel became an independent Federal agency. Prior to that time, under the Civil Service Reform Act, we were a part of the Merit Systems Protection Board, although administratively and functionally separate.

As of July 9, we are a separate agency, but we do have a great deal of interaction with the Merit Systems Protection Board.

We are the investigative and prosecutive arm. We were, under the Civil Service Reform Act, part of the Merit Systems Protection Board, and currently we perform that function as an independent agency. We investigate allegations of prohibited personnel practices and Hatch Act violations.

If we find that a violation has occurred through our investigation, we have a number of options. We can seek corrective action for the employee from the agency. If the agency fails to take corrective action, we can bring a matter before the Board. We can file a suit with the Board. We would be the prosecutor, the Board is the adjudicating authority, the judge in the case.

If we find that disciplinary action is appropriate against an employee who has taken a prohibited personnel practice against another Federal employee, we can bring a disciplinary action before the Board. Again, we are acting as the prosecutor, the Board is the judge and decides the cases.

We have no authority to appeal from the Board's decisions. Employees do have the authority to appeal decisions of the Board, so that the Board, in our cases, is the last stop for adjudication where we do not prevail. But the employee, as I mentioned, has a right to appeal.

PROHIBITED PERSONNEL PRACTICES

Mr. **Roybal.** I think, for the record, we should have a verbal description of what prohibited personnel practices are.

Ms. **Wieseman.** All right. There are 11 of them. They are defined in the statute, and we can certainly submit that for the record rather than going through this list of 11.

Mr. **Roybal.** All right. Please do. Submit it for the record so that it will appear in the record at this point. And we will know just exactly what the prohibited personnel practices are. Then also give us information with regard to your investigative powers.

[The information follows:]

§ 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) "personnel action" means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and

(x) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;

with respect to an employee in, or applicant for, a covered position in an agency;

(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

(C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

(i) a Government corporation;

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of --

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences --

(i) a violation of any law, rule or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or other employee designated by the head of the agency to receive such disclosures, or information which the employee or applicant reasonably believes evidences --

(i) a violation of any law, rule or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of --

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule or regulation;

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

"§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

"(a) This section applies with respect to—

"(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

"(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

"(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

"(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

"(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

"(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

"(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

"(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

"(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

"(1) a summary of the information with respect to which the investigation was initiated;

"(2) a description of the conduct of the investigation;

"(3) a summary of any evidence obtained from the investigation;

"(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(5) a description of any action taken or planned as a result of the investigation, such as—

"(A) changes in agency rules, regulations, or practices;

"(B) the restoration of any aggrieved employee;

"(C) disciplinary action against any employee; and

"(D) referral to the Attorney General of any evidence of a criminal violation.

"(e)(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

"(2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency appear reasonable; and

"(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

"(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General.

"(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General together with a statement noting the failure of the head of the agency to file the required report.

"(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

"(1) the report shall not be transmitted to the complainant; and

"(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(g)(1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special

Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head. If the Special Counsel does not transmit the information to the head of the agency, the Special Counsel shall return any documents and other matter provided by the individual who made the disclosure.

"(2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

"(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall—

"(A) return any documents and other matter provided by the individual who made the disclosure; and

"(B) inform the individual of—

"(i) the reasons why the disclosure may not be further acted on under this chapter; and

"(ii) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

"(h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

"(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

"(1) specifically prohibited from disclosure by any other provision of law; or

"(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

"§ 1214. Investigation of prohibited personnel practices; corrective action

"(a)(1)(A) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(B) Within 15 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall provide written notice to the person who made the allegation that—

"(i) the allegation has been received by the Special Counsel; and

"(ii) shall include the name of a person at the Office of Special Counsel who shall serve as a contact with the person making the allegation.

"(C) Unless an investigation is terminated under paragraph (2), the Special Counsel shall—

"(i) within 90 days after notice is provided under subparagraph (B), notify the person who made the allegation of the status of the investigation and any action taken by the Office of the Special Counsel since the filing of the allegation;

"(ii) notify such person of the status of the investigation and any action taken by the Office of the Special Counsel since the last notice, at least every 60 days after notice is given under clause (i); and

"(iii) notify such person of the status of the investigation and any action taken by the Special Counsel at such time as determined appropriate by the Special Counsel.

"(2)(A) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of—

"(i) the termination of the investigation;

"(ii) a summary of relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the allegations of such person; and

"(iii) the reasons for terminating the investigation.

"(B) A written statement under subparagraph (A) may not be admissible as evidence in any judicial or administrative proceeding, without the consent of the person who received such statement under subparagraph (A).

"(3) Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board. An employee, former employee, or applicant for employment may seek corrective action from the Board under section 1221, if such employee, former employee, or applicant seeks corrective action for a prohibited personnel practice described in section 2302(b)(8) from the Special Counsel and—

"(A)(i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and

"(ii) no more than 60 days have elapsed since notification was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or

"(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

"(4) If an employee, former employee, or applicant seeks a corrective action from the Board under section 1221, pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee, former employee, or applicant only with the consent of such employee, former employee, or applicant.

"(5) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

"(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

"(C) The Board shall allow any agency which is the subject of a stay to comment to the Board on any extension of stay proposed under subparagraph (B).

"(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board—

"(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered; or

"(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

"(2)(A) If, in connection with any investigation, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved and to the Office of Personnel Management, and may report such determination, findings and recommendations to the President. The Special Counsel may include in the report recommendations for corrective action to be taken.

"(B) If, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

"(C) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

"(3) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for—

"(A) oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management; and

"(B) written comments by any individual who alleges to be the subject of the prohibited personnel practice.

"(4)(A) The Board shall order such corrective action as the Board considers appropriate, if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice, other than one described in section 2302(b)(8), has occurred, exists, or is to be taken.

"(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the Special Counsel has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against the individual.

"(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

"(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained by any employee, former employee, or applicant for employment adversely affected by such order or decision.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless—

"(A) the alleged violation has been reported to the Attorney General; and

"(B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed.

"(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

"(1) that the head of the agency has personally reviewed the report; and

"(2) what action has been or is to be taken, and when the action will be completed.

"(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"§ 1215. Disciplinary action

"(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

"(A) committed a prohibited personnel practice,

"(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

"(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

"(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

"(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

"(B) be represented by an attorney or other representative;

"(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

"(D) have a transcript kept of any hearing under subparagraph (C); and

"(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

"(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

"(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

"(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

"(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

"§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

"(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

"(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

"(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

"(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5), if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(c)(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

"(2) If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved.

APPEAL RIGHTS

Mr. **Roybal**. There is no appeal process in so far as Special Counsel is concerned. Is that vested only in the Merit System Protection Board?

Ms. **Wieseman**. We have authority to bring actions before the Board. If we do not prevail, we have no further authority to appeal the case to the Federal Circuit. If we bring a disciplinary action against an employee, a Federal employee, whom we believe through investigation has committed a prohibited personnel practice, that employee, if the Board finds in our favor, has the right to appeal to the Federal Circuit.

Mr. **Roybal**. But it appeals to the Federal Circuit and not to the Merit Systems Protection Board or anybody else?

Ms. **Wieseman**. It appeals the decision of the Merit Systems Protection Board to the Federal Circuit.

Mr. **Roybal**. Sure. What are the chances on appeal?

Ms. **Wieseman**. As Chairman Levinson said today, the Board's affirmance rate with the Court of Appeals is very impressive. He mentioned 94 percent.

So, yes, he certainly does. And the review process itself, I think gives due process to the employee. They have the right to state their case. They have the right to have their case heard. They have the right to have the case decided under principles of law. I think that is an extremely important right, whether or not the employee eventually prevails he has due process. Action is not arbitrarily or captiously taken against them—it is reviewable and reviewable under a comprehensive body of law.

Mr. **Roybal**. I am just concerned about the employee's ultimate rights in the appeal process. We were told a little while ago that before these cases are even filed that there is extensive review. Then finally a decision is made to file. When the filing takes place and it is finally adjudicated, the individual has the right to appeal. Even with that extensive review, about a fourth, 25 percent of the time, the ruling is in favor of the employee. Is that about correct, about 25 percent?

Ms. **Wieseman**. I believe from what Chairman Levinson said that about 20 to 25 percent of the employees do prevail in their appeals to the Board. We have a different function from the Board. We do not adjudicate the cases; we investigate them. The employees come to us complaining that they believe they have been the victim of some prohibited personnel practice—whether reprisal for whistleblowing, which is our highest priority, and where we put the most emphasis in investigation or any other prohibited personnel practice.

They come to us and under our law, we are required to investigate every complaint that comes to our office, and to make a determination whether corrective action for the employee and/or disciplinary action against the person who may have committed a prohibited personnel practice is appropriate.

We have wide-ranging authority to subpoena documents, to go into every civilian Federal agency, and to find the facts through an investigative process rather than an adjudicatory process, and make that determination.

Mr. **Roybal**. I see the difference.

Ms. **Wieseman**. Yes. We practice before the Board as a prosecutor does before a judge, and the Board is the adjudicator.

Mr. **Roybal**. And this is based solely on the investigation that took place?

Ms. **Wieseman**. That's right. The evidence we gather during an investigation.

Mr. **Roybal**. Mr. Skeen?

Mr. **Skeen**. Thank you, Mr. Chairman, Ms. Wieseman.

We discussed, I think, and you have mentioned the deterioration of the average time to complete initial review and investigation, legal review. Does this increase in your budget offer relief in that area?

OSC WORKLOAD

Ms. **Wieseman**. Yes. We think it will, Mr. Skeen. We have requested 15 additional FTEs. As of July 9, when we became an independent agency and the Whistleblower Protection Act came into effect, Congress said that, if we do not complete an investigation of a whistleblower reprisal complaint within 120 days, the employee has the option of pursuing the individual right of action before the Board, or of awaiting——

Mr. **Skeen**. How many days again?

Ms. **Wieseman**. One hundred twenty days.

Mr. **Skeen**. One hundred twenty days.

Ms. **Wieseman**. Or of permitting us to complete our process, and then the employee continues to have the right to appeal 60 days after we close the case.

As a result of that legislation, we initiated internal procedures to process reprisal complaints within 120 days. This meant making reprisal cases the highest priority within the office; it meant taking investigators off of cases that were not whistleblower reprisal cases.

What we hope to do with the 15 additional employees is to continue that goal of concluding an investigation of whistleblower reprisal cases within 120 days, while, at the same time, stemming the deterioration in timeliness for all of the other cases that we receive. Approximately 80 percent of our complaints, historically, have not been whistleblower reprisal cases.

Mr. **Skeen**. Non-whistleblower.

Ms. **Wieseman**. Although I would mention that, of our active investigations, our full field investigations, 56 percent of those currently are whistleblower reprisal cases, which is a very high percentage of our field investigations.

Mr. **Skeen**. It is a very intelligent juggling act that you are doing here. Are you staying within the 120 days with the caseload?

Ms. **Wieseman**. Yes. The first quarter of 1990 we had a 22 percent increase in filings within the office, but we are determined to attain that goal of 120 days.

We are doing our utmost with the personnel we currently have. What we need and what I think our budget justification shows is that we are not going to be able to do that for long. The other cases will deteriorate, and there are many meritorious cases in the other 80 percent.

Mr. **Skeen**. That is the concern I have, whether or not your budget is going to be enough should you have a situation occur that you cannot handle and keep it contained.

Ms. **Wieseman**. The figures we utilize to request our budget, were, I think, realistic, and they are our best estimate at this point. We are determined to do our utmost to attain our goal.

Mr. **Skeen**. What classification are the 15 additional employees?

Ms. **Wieseman**. Pardon me?

OSC PERSONNEL REQUESTS

Mr. **Skeen**. What are the 15 additional employees? What kind of classification?

Ms. **Wieseman**. Attorneys and investigators, primarily.

Mr. **Skeen**. Attorneys and investigators?

Ms. **Wieseman**. Yes. And two support personnel, one additional computer person, and one additional personnel person. We have not increased our overhead in the agency for some three years. That is becoming very difficult. So of the 15, 13 will be the investigators and lawyers who will be reviewing and investigating, prosecuting these cases; two will be overhead.

Mr. **Skeen**. What do you have to pay a starting lawyer?

Ms. **Wieseman**. They start down to, I guess, a nine——

Mr. **Skeen**. GS-9?

Ms. **Wieseman** [continuing]. From our Complaints Examining Unit, up to a 13.

Mr. **Skeen**. What does a 9 pay to start?

Ms. **Wieseman**. Mr. Caldwell, I am sure, knows what that is.

Mr. **Caldwell**. I can tell you in just a moment exactly what it is.

Mr. **Skeen**. It would be very interesting, because several entities around the Hill here are talking about—the Ethics Committee was looking for attorneys and so forth, and said, "Do you know any attorneys you can hire for this number?", and I said, "I doubt it."

Mr. **Caldwell**. That is a real problem, because of the competitive level in the private practice. To get somebody at the journeyman rate here is virtually impossible.

Mr. **Skeen**. We can just get it for the record.

[The information follows:]

Attachment 2

GENERAL SCHEDULE

Providing Restoration of Certain Capped Rates
Effective in February 1990

	1	2	3	4	5	6	7	8	9	10
GS-1	$10,581	$10,935	$11,286	$11,637	$11,990	$12,197	$12,544	$12,893	$12,910	$13,232
2	11,897	12,180	12,574	12,910	13,053	13,437	13,821	14,205	14,589	14,973
3	12,982	13,415	13,848	14,281	14,714	15,147	15,580	16,013	16,446	16,879
4	14,573	15,059	15,545	16,031	16,517	17,003	17,489	17,975	18,461	18,947
5	16,305	16,849	17,393	17,937	18,481	19,025	19,569	20,113	20,657	21,201
6	18,174	18,780	19,386	19,992	20,598	21,204	21,810	22,416	23,022	23,628
7	20,195	20,868	21,541	22,214	22,887	23,560	24,233	24,906	25,579	26,252
8	22,367	23,113	23,859	24,605	25,351	26,097	26,843	27,589	28,335	29,081
9	24,705	25,529	26,353	27,177	28,001	28,825	29,649	30,473	31,297	32,121
10	27,206	28,113	29,020	29,927	30,834	31,741	32,648	33,555	34,462	35,369
11	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855
12	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
13	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
14	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
15	59,216	61,190	63,164	65,138	67,112	69,086	71,060	73,034	75,008	76,982
16	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	83,981*	86,251*	
17	79,762*	82,421*	85,080*	87,739*	90,398*					
18	93,484*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which would be $78,200.

SENIOR EXECUTIVE SERVICE

ES-1	$71,200
ES-2	74,400
ES-3	77,600
ES-4	79,200
ES-5	81,400
ES-6	83,600

EXECUTIVE SCHEDULE

level I	$107,300
level II	96,600
level III	89,000
level IV	83,600
level V	78,200

Ms. Wieseman. I think it is around $30,000.

Mr. Skeen. About $30,000?

Mr. Caldwell. Yes.

Mr. Skeen. You are not going to find many attorneys. For the record, I was just curious, because it is very difficult.

Ms. Wieseman. It is.

OSC HOTLINE

Mr. Skeen. How does your hotline service work?

Ms. Wieseman. It works very well, we think.

Mr. Skeen. Still in existence?

Ms. Wieseman. Yes, sir.

Mr. Skeen. Still working?

Ms. Wieseman. It certainly is. What we have been doing and will continue to do is to let the Federal employee know that we have it, that it is available, that they can confidentially make disclosures of fraud, waste, and abuse, that something will be done about them if their information is verifiable. So, yes, it is continuing to be effective.

I believe of the numbers and complaints we receive, somewhere around 50 percent were found to be meritorious in some respects, not in total.

Mr. Skeen. Fifty percent?

Ms. Wieseman. Around 50 percent, in some respects, not the entire complaint, but that there was some problem.

Mr. Skeen. Some merit to at least 50 percent.

Ms. Wieseman. That's right. We screen the disclosures when they come in. We do not investigate them ourselves. These are disclosures concerning fraud, waste, and abuse, not complaints of reprisal for disclosing. We refer the disclosures to the agencies, and we have had good cooperation from the agencies in conducting the investigations and in taking action.

Mr. Skeen. Have we had reprisals?

Ms. Wieseman. Yes, there have been reprisals for whistleblowing. In our case, if an employee comes to us through our hotline or however, through writing or walking in our front door, and wants to make a disclosure, we will maintain their confidentiality for that disclosure, not disclose the identity of the employee to the agency, unless the employee consents to have his name disclosed.

I am not answering your question, I think.

We have not seen a reprisal taken against a whistleblower who came to us through the hotline in my time as special counsel.

Mr. Skeen. Through the hotline?

Ms. Wieseman. That's right. The reprisals we get are where disclosures are made within the agency, or to the Congress, or to the press, or whatever, not through our confidential hotline.

Mr. Skeen. Okay. Thank you very much. Thank you, Mr. Chairman.

OSC AUTHORITY

Mr. Roybal. Ms. Wieseman, I think you stated that you are now an independent agency. Is that correct?

Ms. Wieseman. Yes.

Mr. **Roybal**. As an independent agency, do you have the authority to enforce your decisions, or must they be referred to the Merit Systems Protection Board?

Ms. **Wieseman**. We have the authority to enforce some decisions. To require witnesses to testify, we can issue subpoenas. If the witness has refused to testify, we have to seek court enforcement. Our cases are brought before the Board. We cannot enforce our recommendations. We have to have a Board order, which is enforceable against the agencies.

Mr. **Roybal**. In other words, the Board actually acts as the court?

Ms. **Wieseman**. That is correct.

Mr. **Roybal**. And you make your presentation to them, and then whatever authority they have, you use accordingly.

Ms. **Wieseman**. That is correct.

Mr. **Roybal**. In this investigation that you make, don't you make recommendations as to what the penalty should be?

Ms. **Wieseman**. In a corrective action situation for instance where an employee has come to us and said I have been removed in reprisal for whistleblowing and through investigation, we determine that there are reasonable grounds to believe that that has occurred, and that we can prove that, we are required initially to go to an agency, set out our case to the head of the agency, and we may make recommendations as to what the corrective action for the employee should be. In almost all cases—in fact, all cases that I have been involved with—we have made recommendations to the agency.

If the agency fails to take the corrective action that we have recommended within a certain time period, it is at that point that we go to the Board and ask the Board to adjudicate the matter, and to issue a ruling. During the three-and-one-half years of my term we have had excellent relationships with the agencies, when we have asked for corrective action, when we set out our case, the agencies have taken the corrective action. We have not had to file an action for corrective action with the Board. We have filed a number of disciplinary actions over the years.

As to corrective actions, the agencies, I think, understand and can see with their own eyes the validity of our investigative process and our investigative conclusions.

Mr. **Roybal**. All right. Do you deal only with prohibited personnel practices or do you also take class action cases?

Ms. **Wieseman**. Our primary responsibility is prohibited personnel practices. We also investigate Hatch Act violations, which is partisan political activity by Federal and certain state and local employees, and then our third function is the disclosure channel.

We have authority also to look at systems within the Merit System, to self-initiate investigations where we believe there may be a problem with the Merit System. We bring actions before the Board for individual employees for corrective action within agencies. There may be more than one employee involved, but the investigation involves specific factual situations involving individual employees.

HATCH ACT

Mr. Roybal. I am interested in your mentioning the Hatch Act, because violations that we have seen with regard to the Hatch Act, with regard to the interpretation given the Hatch Act by employers, who do not like a particular action taken by an individual. They claim that that individual is in violation of the Hatch Act. Is the Hatch Act that specific in order to make that determination?

Ms. Wieseman. We are the only Federal agency who can investigate and bring actions for Hatch Act violations. We also have the responsibility under the act of giving advisory opinions as to whether particular fact patterns are or are not in violation of the Hatch Act.

Mr. Roybal. Who defends the employee when there is a charge against him on the Hatch Act violation?

Ms. Wieseman. The employee may have agency counsel or they may have their own counsel if we bring an action. There have been very few actions brought against Federal employees for violating the Hatch Act in the ten-year history of the Civil Service Reform Act.

Our primary goal is to inform employees of what the act requires, to warn them to cease activity that we determine is a violation of the Hatch Act, and only as a last resort to bring a prosecution.

In fact, as of last year, this figure may be off one or two, but, as of last year, there had only been 29 prosecutions of Federal employees for Hatch Act violations in the 10-year history of the Office of Special Counsel.

Mr. Roybal. I think there are violations of the act going on but not to the extent that some of the employees contend that problem exists.

Last year, for an example, I went throughout the country, and many of the employees were not permitted to attend a meeting on Federal property because there were two members of a House there and a Senator present. I think that is a violation of their rights, not a violation of the Hatch Act. That happened on two occasions.

Ms. Wieseman. Mr. Roybal, we are available. If any Federal employee has a question with regard to whether the Hatch Act is or is not violated by certain activity, we have attorneys who will answer telephone inquiries. We have attorneys who will attempt to answer telephone inquiries, if we can and if it is not a complicated factual situation. If we do need more time to decide it, an employee can submit a request in writing. We will answer the question, give advice.

We are the only agency who can bring an action for Federal Hatch Act violations.

Mr. Roybal. It seems to me that these employers should have that phone number so that they can call before they mandate that individual not do certain things. I am sure that you do have such a number, and it just so happened that, in these instances, that individual did not know about it or did not choose to call.

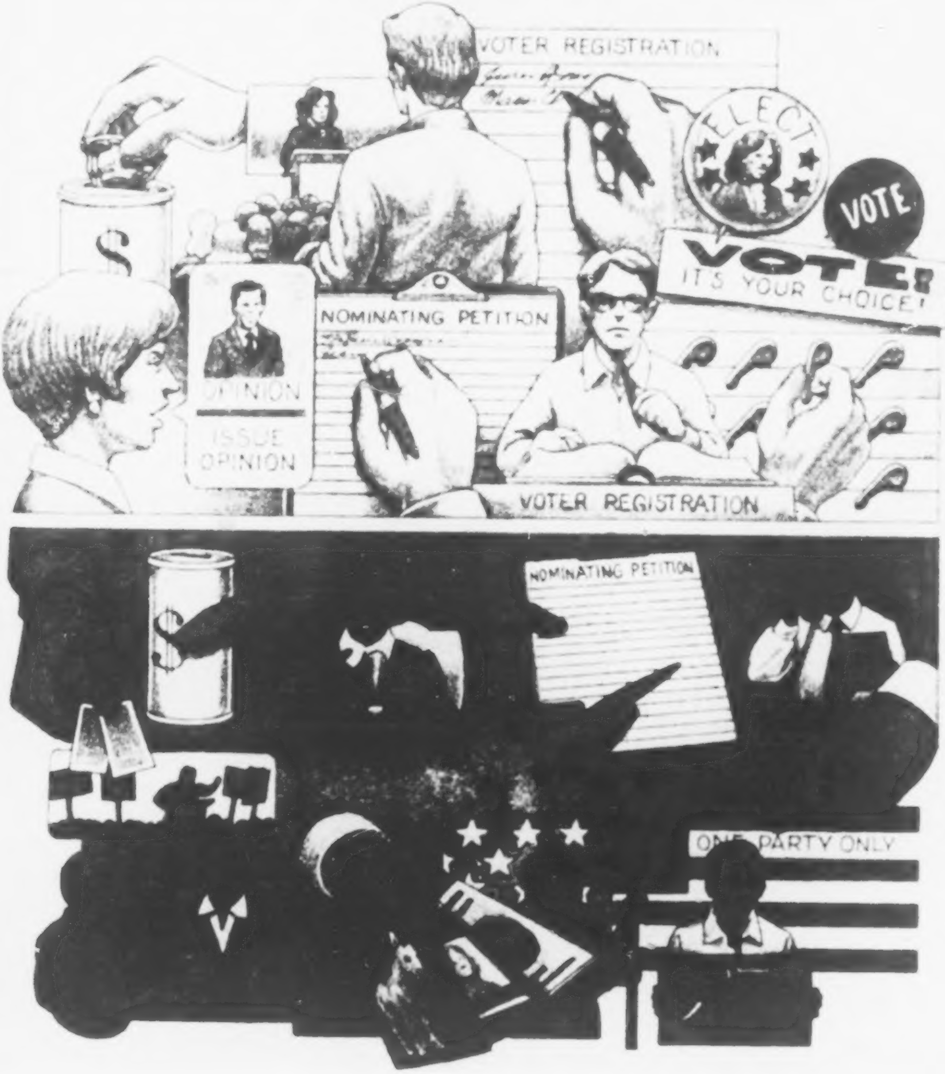
Ms. Wieseman. We do notify all Federal agencies and Federal agency heads of our advisory function. We have a pamphlet that we have just recently revised to make more clear what are the dos and don'ts under the Hatch Act, and we try to make ourselves as available as possible so there will not be any confusion concerning what is or is not prohibited by the Hatch Act.

Mr. **Roybal**. I would appreciate it if you would send a copy of that pamphlet, and we can make it a part of the record. I would also like to have it pursued.

Ms. **Wieseman**. I certainly will. Thank you.

[The information follows:]

POLITICAL ACTIVITY
AND THE FEDERAL EMPLOYEE


VOTER REGISTRATION
$
ELECT
VOTE
VOTE!
IT'S YOUR CHOICE!
NOMINATING PETITION
OPINION
ISSUE OPINION
VOTER REGISTRATION
$
NOMINATING PETITION
ONE PARTY ONLY

POLITICAL ACTIVITY
AND THE FEDERAL EMPLOYEE

The Hatch Act
  Its Importance to Federal Employees 2
Who Is Covered 3
Who Is Not Covered 3
Political Do's & Don'ts for Federal Employees 4
Questions and Answers 5
  General Provisions 5
  Permitted Activities 5
  Prohibited Activities 7
  Registration and Elections 7
  Additional Considerations 8
  Excepted Communities 8
  Penalties for Violation 9
  District of Columbia School Teachers 9
The Office of Special Counsel 10
Chapter 73, Title 5, United States Code 11

IMPORTANT NOTE

This booklet summarizes the laws, regulations and policies governing the political activities of federal employees and employees of the District of Columbia government. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of Special Counsel or by submitting those questions, in writing, to the address listed below.

Office of Special Counsel
1120 Vermont Avenue, NW, Suite 1100
Washington, DC 20005
202/653-7188

The Hatch Act
Its Importance to Federal Employees

The political activity of government employees has been a concern of government officials since the earliest days of the Republic. Thomas Jefferson, the nation's third president, was among the first to express concern about this issue. In response to Jefferson's concern, the heads of the executive departments issued an order which stated that while it is "the right of any officer (federal employee) to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution . . ."

However, despite the concerns of Jefferson and other American statesmen, almost a century and a half elapsed before Congress enacted a comprehensive law regarding the political activities of government employees.

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia and certain employees of state and local governments. In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government and certain employees of state and local governments must be limited for public institutions to function fairly and effectively. The courts have held that the Hatch Act is not an unconstitutional infringement on employees' first amendment right to freedom of speech because it specifically provides that employees retain the right to speak out on political subjects and candidates. However, employees are forbidden to speak out or engage in activities in concert with the organized efforts of political parties or candidates.

Before 1979, the U.S. Civil Service Commission had primary enforcement responsibilities for the Hatch Act. However, the Civil Service Reform Act of 1978 transferred the Commission's investigative and prosecutorial authority to the Office of Special Counsel.

Who Is Covered?

With very few exceptions, all employees in the executive branch of the federal government are subject to the political activity provisions of the Hatch Act. Employees of the U.S. Postal Service and the District of Columbia government are also subject to this law.

Part time or temporary employees are also covered by the provisions of the Act. However, intermittent or occasional employees such as consultants, are covered only during the 24 hour period of any day in which they are actually employed.

It should be noted that all covered employees continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

Who Is Not Covered?

The provisions of the Hatch Act do not apply to employees paid from the appropriation for the Office of the President, to heads and assistant heads of executive or military departments, and to officials who develop and implement national or foreign policy, and who are appointed to such positions by the President, subject to confirmation by the U.S. Senate.

The law also does not apply to individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or part by the District of Columbia or by recognized religious, philanthropic or cultural organizations.

There is also a partial exemption for federal employees living in the vicinity of Washington, D.C., and in other communities where the majority of voters are employed by the federal government. (A detailed explanation of this exemption and those communities where it applies can be found in the Question and Answer section. See page 8.)

Political Do's & Don'ts For Federal Employees

The following list contains examples of both permissible and prohibited political activities for covered employees. These examples will be discussed in greater detail in the next section of the booklet.

Covered Employees

- **May** register and vote as they choose
- **May** assist in voter registration drives
- **May** express opinions about candidates and issues
- **May** participate in campaigns where none of the candidates represent a political party
- **May** contribute money to political organizations or attend political fund raising functions
- **May** wear or display political badges, buttons or stickers
- **May** attend political rallies and meetings
- **May** join political clubs or parties
- **May** sign nominating petitions
- **May** campaign for or against referendum questions, constitutional amendments, municipal ordinances

- **May not** be candidates for public office in partisan elections
- **May not** campaign for or against a candidate or slate of candidates in partisan elections
- **May not** make campaign speeches or engage in other campaign activities to elect partisan candidates
- **May not** collect contributions or sell tickets to political fund raising functions
- **May not** distribute campaign material in partisan elections
- **May not** organize or manage political rallies or meetings
- **May not** hold office in political clubs or parties
- **May not** circulate nominating petitions
- **May not** work to register voters for one party only

An election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

Questions and Answers

General Provisions

Q What does federal law provide concerning political activity by federal and District of Columbia employees?

A Generally, covered employees may not actively participate in partisan politics. Primary and runoff elections to nominate candidates of partisan political parties are partisan elections for purposes of the law even though no party designation appears on the ballot. Covered employees are also prohibited from taking an active part in partisan political management.

Specifically, an employee may not run as a candidate or actively work in a campaign if any of the candidates for the public office is to be nominated or elected as a candidate of a national or state political party such as the Republican or Democrtic Party. Being a campaign worker in such an election or holding an official position in a national or state political party is prohibited.

While the Hatch Act prohibits political activity, it does not prohibit covered employees from holding public office. If individuals hold elective office at the time they obtain federal employment, they may continue to serve. However, such employees may not be candidates for re-election in partisan elections. Likewise, employees may accept appointments to fill vacancies in elected offices, or serve if elected in nonpartisan elections, unless the employing agencies determine that this constitutes a conflict of interest with the performance of federal duties.

Q Who is responsible for enforcing the Hatch Act?

A The Office of Special Counsel enforces the law for covered federal service employees and for employees of the District of Columbia government.

Permitted Activities

Q What political activity is permitted by the statute?

A All qualified citizens have the right to register and vote. They also have the right to express their opinions on political questions and political candidates.

Q Are employees allowed to take a direct part in any election campaigns?

A They may take an active part in nonpartisan elections—even as candidates. As an example, a nonpartisan election is one where none of the candidates running for office are representatives of the Democratic or Republican parties. (If a federal employee wishes to serve in a state or local government position, the employee should check the regulations of his federal agency regarding outside employment.)

6 Q To what extent are employees permitted to express opinions on political subjects and candidates?

A Employees may express their views publicly or privately about a candidate or about political issues. However, they may not engage in active campaigning for partisan candidates. The display of a political badge, button or sticker is not prohibited political activity but may be restricted by agency regulations while employees are carrying out official duties.

With regard to political questions and public issues, employees are entitled to express their views as citizens. In addition, employees are free to express their views and take action as individual citizens on such questions as referendum matters, changes in municipal ordinances and constitutional amendments. Issues involving highways, schools, housing and taxes are other examples of questions on which employees are usually free to take action. They can participate in meetings where these issues are discussed and they may join other citizens in presenting their views on such questions.

Q Are employees entitled to make financial contributions?

A Employees may make contributions to political organizations. However, employees are prohibited from either soliciting or collecting contributions for political organizations.

Q May employees attend political rallies and join political clubs?

A Employees may attend political rallies as spectators. They may not participate in the rallies by carrying banners or placards.

They may join partisan political clubs but cannot take an active part in the management of the clubs, be officers or members of any of its committees.

Q May employees attend political conventions?

A Yes. Covered employees may attend political conventions, but only as spectators. Employees are not allowed to take part in the deliberations or proceedings of the conventions or any of its committees. Covered employees may not be candidates for, or serve as delegates, alternates or proxies at such conventions.

Q May an employee write a letter to the editor of a local newspaper expressing an opinion on a partisan issue?

A Yes. But employees may not write letters in connection with political parties or partisan groups or candidates.

Q May a federal employee place a sign on his or her automobile, or in his or her yard, which supports or opposes a political candidate?

A So long as this activity is an expression of personal opinion, it is permissible under the Hatch Act. The size of any such sign is irrelevant.

Q May a federal employee who is the spouse of a political candidate appear in campaign photographs with the candidate?

A Yes. The employee can be included in "family of the candidate" photographs which might appear in newspapers or in campaign literature.

Q May a covered employee's spouse, if he or she is not covered by the law, engage in political activity?

A Yes. The law does not restrict the activities of an employee's spouse or of other family members in any way.

Prohibited Activities

Q May employees work as part-time volunteers for partisan candidates if the activity does not involve contact with the public?

A No. The law prohibits direct action to assist partisan candidates or political parties in campaigns. Thus, covered employees are not permitted to do clerical work at campaign headquarters, write campaign speeches or canvass voters for the purpose of promoting support for candidates or political parties.

The prohibition applies to voluntary campaign work such as addressing and stuffing envelopes even when the activity is conducted in the employee's own home.

If however, employees have a part-time profession or business, they may be allowed to provide services to political parties or to the candidates under certain circumstances. If employees regularly provide such services and the services do not require the employees to perform duties which directly involve their creative talents in functions normally associated with campaigning, the services may be rendered to the parties or candidates.

Q What are some of the other activities that are prohibited?

A Activities such as soliciting or collecting political contributions, or selling fund-raising dinner tickets are prohibited. Also prohibited is distributing campaign material in connection with political parties or partisan groups or candidates.

Registration and Elections

Q Are employees allowed to actively assist in voter registration drives?

A Yes. Employees may participate in nonpartisan voter registration drives but they may not attempt to influence voters to register for a particular party.

Q May employees use cars to take voters to the polls on election day?

A Yes. Employees may assist voters to the polls as a gesture of goodwill or as part of an effort by a nonpolitical organization. Employees may not assist voters to the polls as part of an organized effort on behalf of candidates or political parties.

Q Employees are sometimes asked to serve as registrars on registration day or as election clerks or officers on election day. Are they permitted to do this?

A Yes. Employees may accept appointments to serve as election clerks, officers or in similar positions as prescribed by state or local law. However, they may not work at the polls on behalf of partisan candidates or political parties by acting as checkers, challengers, watchers or in similar partisan positions.

Additional Considerations

Q Are any employees in an executive federal agency exempt from the restrictions of the federal law?

A Yes, the heads and assistant heads of departments, members of the White House staff and officials who determine national or foreign policy and who are appointed by the President, subject to Senate confirmation, are exempt from the prohibition against engaging in political management and political campaigns.

Q Does the law apply to part-time employees or to temporary employees?

A Yes, it applies to both. Intermittent or occasional employees, however, are covered only during the 24-hour period of any day on which they are actually employed.

Partially-Exempted Communities

Q Are there any instances when a federal employee may be a candidate or take an active part in a partisan election?

A Yes. A special rule applies to local elections in certain communities of Maryland and Virginia near Washington, D.C., and in a few designated municipalities in other parts of the country. In communities designated by the U.S. Office of Personnel Management, federal employee residents may participate actively in local partisan campaigns and elections but only as independent candidates, or on behalf of or against independents in the communities in which they reside. The communities to which the partial exemption apply are listed below.

Maryland: Annapolis, Anne Arundel County, Berwyn Heights, Bethesda, Bladensburg, Bowie, Brentwood, Capitol Heights, Cheverly, Chevy Chase, Martin's Additions, Sections 1-4 to Chevy Chase, Chevy Chase View, College Park, Cottage City, District Heights, Edmonston, Fairmont Heights, Forest Heights, Garrett Park, Glenarden, Glen Echo, Greenbelt, Howard County, Hyattsville, Kensington, Landover Hills, Montgomery County, Morningside, Mount Rainier, New Carrollton, North Beach, North Brentwood, North Chevy Chase, Northwest Park, Prince Georges County, Riverdale, Rockville, Seat Pleasant, Somerset, Takoma Park, University Park, Washington Grove.

Virginia: Alexandria, Arlington County, Clifton, Fairfax County, Town of Fairfax, Falls Church, Herndon, Loudon County, Manassas, Manassas Park, Portsmouth, Stafford County, Prince William County, Vienna .

Others: Anchorage, Alaska; Benecia, Calif.; Bremerton, Wash.; Centerville, Ga.; Crane, Ind.; District of Columbia; Elmer City, Wash.; Huachuca City, Ariz.; New Johnsonville, Tenn.; Norris, Tenn.; Port Orchard, Wash.; Sierra Vista, Ariz.; Warner Robins, Ga.

ADDENDUM REGARDING PARTIALLY-EXEMPTED COMMUNITIES (PAGES 8-9)

The District of Columbia continues to be listed in Office of Personnel Management (OPM) regulations at 5 C.F.R. §733.124 as one of several partially-exempted communities for Hatch Act purposes. (Certain Hatch Act prohibitions are inapplicable to otherwise covered government employees residing in partially-exempted communities.) Nevertheless, it should be noted that a decision of the United States District Court for the District of Columbia declared this designation invalid. In view of this decision, the Office of Special Counsel does not consider the District of Columbia to be a partially-exempted community, and will regard federal employees who reside in the District of Columbia to be fully covered by the Hatch Act. This means that federal employees residing in the District of Columbia, unlike federal employees residing in partially-exempted communities, may not participate actively in local partisan campaigns either as independent candidates, or on behalf of or in opposition to independent candidates. This determination also applies to covered employees of the District of Columbia government who reside in the District of Columbia.

Q. What is the basis for granting partial exceptions from Hatch Act restrictions to the residents of certain communities?

A. Upon request, the partial exemption is granted by the Office of Personnel Management, under certain conditions, to communities in which large numbers of voters are employed by the federal government. The exemption recognizes that in such communities the interest of the community and the federal employee may allow such direct participation in local government.

Q. How does this special right differ from the general restriction that applies to all federal employees?

A. Under the general restriction, federal employees cannot be candidates for a local public office or campaign in elections for local public office in which other candidates for the same office represent partisan political parties (Republican or Democrat). In an excepted community the employee may run as an independent candidate against partisan political candidates and may actively work for or against independent candidates in such elections.

Q. To what extent may federal employees who reside in excepted communities campaign for independent candidates for local office?

A. Employees may take an active part in the conducting of rallies and the operation of an independent candidate's campaign. In other words, they may engage in all campaign activities on behalf of independent candidates, except for soliciting and receiving political contributions from other federal employees.

Q. Why is soliciting and receiving political contributions from other federal employees an exception to the permitted activities in the designated communities?

A. The Hatch Act and the criminal laws of the United States prohibit the solicitation or receipt of political contributions by federal employees from other federal employees.

Penalties for Violation

Q. What is the penalty for violating the Hatch Act?

A. For covered federal employees and District of Columbia government employees, the most severe penalty for violation is removal. The minimum penalty is suspension without pay for 30 days.

Q. Where is the law found that restricts political activity of federal and District of Columbia government employees?

A. Sections 7321-7327 of Title 5, United States Code. Part 733 of title 5, Code of Federal Regulations.

District of Columbia School Teachers

Q. How does the law affect District of Columbia school teachers?

A. Teachers and other employees of the District of Columbia school system are not covered by the law.

The Office of Special Counsel

10 The Office of Special Counsel (OSC) is responsible for investigating reports or complaints concerning Hatch Act violations committed by covered federal employees and by employees of the District of Columbia government.

If an investigation uncovers evidence of a violation of the law and the OSC determines that the violation warrants prosecution, a written complaint for disciplinary action is filed with the U.S. Merit Systems Protection Board (MSPB). A copy of the complaint is served on the charged employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideraiton of the entire record, the MSPB will notify the employee and the employing agency of its decision. If the MSPB finds that the employee has violated the law, the maximum penalty that can be imposed is removal from government service. The minimum penalty that can be assessed is suspension without pay for 30 days.

In an effort to better acquaint federal employees with the provisions regarding political activity, OSC attorneys are available to brief groups of federal employees on the Hatch Act. Past experience has shown that briefing programs are most effective with groups of 30 to 60 people. Arrangements for personal briefing sessions of this nature may be requested by contacting the Office of Special Counsel, Washington, D.C. 20005.

Title 5. United States Code

Chapter 73—Suitability, Security, and Conduct
Subchapter 111—Political Activities

Sec.

7321. Political contributions and services.
7322. Political use of authority or influence; prohibition.
7323. Political contributions; prohibition.
7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
7325. Penalties.
7326. Nonpartisan political activity permitted.
7327. Political activity permitted; employees residing in certain municipalities.
7328. General Accounting Office employees.

§ 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

§ 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

§ 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) An employee in an Executive agency or an individual employed by the Government of the District of Columbia may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(d) Subsection (a)(2) of this section does not apply to—

(1) an employee paid from the appropriation for the office of the President;

(2) the head or the assistant head of an Executive department or military department;

(3) an employee appointed by the President, by and with the consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

(5) the Recorder of Deeds of the District of Columbia.

12 **§ 7325. Penalties**

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

§ 7326. Nonpartisan political activity permitted

Section 7324 (a)(2) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

§ 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324 (a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

§ 7328. General Accounting Office employees

The preceding provisions of this subchapter shall not apply to employees of the General Accounting Office.

Mr. Roybal. We would like to thank you and your colleague for your testimony.

Ms. Wieseman. Thank you very much.

[The justifications follow:]

OFFICE OF SPECIAL COUNSEL
FY 1991
BUDGET JUSTIFICATION

OFFICE OF SPECIAL COUNSEL

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Special Counsel, pursuant to Reorganization Plan Number 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95-454), and the Whistleblower Protection Act of 1989 (Public Law 101-12), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles: $6,608,000. (Independent Agencies Appropriations Act, 1990.)

Obligations by Object Class

	1990 Estimate	1991 Estimate	Increase or decrease from 1990 estimate
Total number of permanent positions	86	101	15
Total FTE	86	101	15

(In thousands of dollars)

	1990 Estimate	1991 Estimate	Increase or decrease from 1990 estimate
Personnel compensation			
Permanent positions	3,667	4,192	525
Other personnel compensation	0	0	0
Total personnel compensation	3,667	4,192	525
Personnel benefits	440	503	63
Travel and transportation of persons	236	346	110
Transportation of things	8	168	160
Rental payments to GSA	376	454	78
Rent, communications, and utilities	161	201	40
Printing and reproduction	20	76	56
Other services	124	453	329
Supplies and materials	40	50	10
Equipment	35	165	130
Total obligations by object class	5,107	6,608	1,501

Analysis of Authorized Level for Fiscal Year 1991

(Dollars in thousands)

	FTE	Amount
1990 Appropriation	86	5,107
Estimates, 1991	101	6,608

Digest of Budget Estimates by Activities
Increase or Decrease (-)

Activity	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate		Total Change	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Activity 1								
Investigation and Prosecution of Prohibited Practices	76	4,619	81	4,647	96	6,145	15	1,498
Activity 2								
Processing Whistleblower Allegations	5	447	5	460	5	463	0	3
Total Appropriation Authorized Level	81	5,066	86	5,107	101	6,608	15	1,501
Permanent Positions Authorized	(81)		(86)		(101)			

Summary Explanation of Changes Requested for Fiscal Year 1991
Based on Fiscal Year 1990 Appropriation

(Dollars in Thousands)

	Activity 1		Activity 2		Total	
	FTE	Amount	FTE	Amount	FTE	Amount
Program Changes	-	-	-	-	-	-
Other Changes						
Increases necessary to maintain current levels:						
1. Net cost of Merit Pay and within-grade increases required by statute	-	58	-	1	-	59
2. Full year cost of 1990 pay raise	-	180	-	2	-	182
3. Payment to GSA for space and related charges	-	656	-	-		656
4. Net cost of increase in FTE positions	15	719	-	-	15	719
Total Increases	15	1,613	-	3	15	1,616
Reductions, nonrecurring costs and other savings:						
Savings from salary lapses	-	-115	-	-	-	-115
Total Reductions	-	-115	-	-	-	-115
Total increase or decrease 1991 compared with 1990 estimates	15	1,498	-	3	15	1,501

Office of Special Counsel
Summary Justification of FY 1991 Budget Estimates

General Statement

The Office of Special Counsel (OSC) is charged with enforcement of certain provisions of the Civil Service Reform Act of 1978 (Public Law 95-454), as amended by the Whistleblower Protection Act of 1989 (Public Law 101-12). The primary functions of the office are:

> 1) to investigate and, if appropriate, prosecute prohibited personnel practices, including reprisal for protected disclosures of information;
>
> 2) to investigate and, if appropriate, prosecute prohibited political activities on the part of federal and covered state and local employees; and
>
> 3) to provide employees a safe channel for disclosures of information concerning wrongdoing in federal agencies, with assurance that the confidentiality of the discloser will be maintained and that appropriate action will be taken.

The statute also requires OSC to investigate and, if warranted, prosecute allegations of: arbitrary or capricious withholding of information under the Freedom of Information Act; involvement of any employee in any prohibited discrimination found by any court or appropriate administrative authority; and any other activity prohibited by civil service law, rule or regulation.

Consistent with the Administration's budget, the requested budget authority for FY 1991 is $6,608,000, with 101 FTE positions. This represents an increase of $1,501,000 over the FY 1990 appropriation level of $5,107,000 and an increase of 15 FTE positions from the current year FTE level of 86. The objective of the office continues to be a responsive and efficient operation which protects federal employees from prohibited personnel practices and protects the integrity of merit system safeguards for applicants and employees.

Program Objectives of the Office of Special Counsel

1. Investigation and Prosecution of Reprisals for Whistleblowing and other Prohibited Activities

Objectives: To receive, review, and investigate as necessary, and resolve in a timely manner allegations of prohibited personnel practices (especially allegations of reprisal for whistleblowing), allegations of other activities prohibited by civil service law, rule or regulation, and alleged violations of the Hatch Act; to provide all federal employees and covered state and local government employees with information describing their rights and obligations under the Hatch Act; and to maintain an information filing and retrieval system which will meet case processing and control, management information, public disclosure, privacy protection and Congressional oversight reporting requirements and will assist in increasing productivity and measuring performance.

The importance placed by Congress on the timely processing of complaints is clearly reflected by the additional rights granted to complainants under the Whistleblower Protection Act (WPA). Any complainant who claims reprisal for whistleblowing, and whose complaint is more than 120 days old and is still pending with OSC, has the right to file an individual right of action with the Merit Systems Protection Board (MSPB). Although the WPA does not mandate that the OSC take final action on whistleblower allegations within 120 days, there are important reasons why OSC should meet this time frame.

First, if there has been an improper personnel action against a whistleblower, it should be remedied expeditiously by the government. This is the fundamental spirit of the bill. Over the past several years, OSC has had considerable success in obtaining corrective actions by agreement from the agencies and there is every expectation that this practice will continue. Thus, if there has been an improper action and OSC can complete its investigation, there is an excellent chance that the action can be corrected without expensive, disruptive and time-consuming litigation.

Second, if the complaint does not prove to be meritorious after investigation and OSC explains the reasons to the complainant in the expanded closure letter now required by the law, some employees will decide not to pursue questionable and expensive actions on their own before the MSPB.

Third, if employees with meritorious cases pursue them individually before the MSPB (because OSC is unable to resolve their complaints within 120 days) and prevail in the action, an agency will be required to pay attorney fees and costs.

Finally, if OSC is unable to resolve the matter within 120 days, some employees may elect to file individual actions anyway, thus rendering essentially meaningless and wasteful OSC's efforts up to that point.

Field investigations of complaints require more resources per matter than any other phase of processing. Workload has increased with escalating demands for more intensive investigations of complaints required by court decisions and increased Congressional interest. The changes in the law brought by the WPA have further increased the workload. During fiscal year 1989, the average time for the OSC to complete the processing of a reprisal for whistleblowing allegation which included a field investigation was 492 days. The additional 15 FTE's and increased funds requested by OSC are necessary to reduce processing time for reprisal for whistleblowing complaints to 120 days and to process other complaints in a timely fashion. This request is based upon projections made from current workload figures. If the office receives an increased number of complaints, these additional resources may prove to be inadequate.

Under the current Special Counsel, new emphasis has been placed on obtaining corrective action for complainants who were victimized by prohibited personnel practices, in addition to assuring that violators of the law are disciplined. These efforts have included cancellation of removal and position abolishment actions, reinstatements, withdrawal of geographic reassignments, retroactive promotions, rescission of reprimands, back pay adjustments amounting to thousands of dollars; and deletion of adverse information in employee personnel records. The importance of this new emphasis is clear, but it places an increased burden on the OSC's already strained personnel resources.

Accomplishments: During FY 1989, 1,058 prohibited personnel practice complaints and 102 Hatch Act complaints were received; 23 new litigation cases were initiated; 182 field investigations were completed; 1,185 matters and corrective action cases were closed; and 19 litigation cases were closed.

The continued success of the OSC is reflected by the fact that in FY 1989, the OSC sought and obtained a significant number of corrective actions on behalf of a substantial number of federal employees, including whistleblowers. Specifically, the OSC initiated and/or successfully completed 26 actions through negotiations with agencies. The quality and success of OSC's work is also reflected by the fact that in FY 1989, the OSC filed complaints against 11 agency officials before the MSPB, received recommended decisions from the Administrative Law Judge favorable to OSC against 16 respondents, and prevailed in 3 final decisions rendered by the Board. In one case, the Board granted stays of proposed personnel actions at OSC's request to permit further investigation of an allegaton of reprisal for whistleblowing. Additionally, in 14 cases in FY 1989, the OSC obtained stays requested from the agencies to allow additional time for OSC to conduct its investigation without the necessity of litigation before the Board. Pursuant to its authority set forth in 5 U.S.C. § 1214(b)(1)(B), OSC terminated its inquiry in nine matters after notifying the head of the agency in question of wrongdoing uncovered during the OSC investigation, and receiving notice from the agency that appropriate corrective and/or disciplinary action was taken. Finally, pursuant to its authority set forth at 5 U.S.C. § 1215(b), the OSC referred one allegation of a prohibited personnel practice to the President for appropriate action.

Hatch Act warning letters were sent in 29 matters. In addition, 678 employees, Congressional staff members and members of the public were provided information on the Hatch Act through informal telephone contacts and formal written requests for advisory opinions. Briefings to groups and publications prepared and distributed by OSC also provided Hatch Act guidance to affected individuals. A major prosecution was brought against public employees for coercing political contributions and services from subordinates. After trial on these charges, an Administrative Law Judge ruled in favor of the OSC in July of 1989. The OSC is awaiting final Board action in the case.

2. Process Whistleblower Disclosures

Objective: To identify, evaluate, and refer to the appropriate agency head, within 15 days of receipt, information received from federal employees evidencing violations of law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety, and to protect the identity of the source, as required by law. On determination by the office that there is substantial likelihood the information does evidence wrongdoing, to require the head of the agency concerned to investigate the matter and report thereon to Congress, the President, and the Special Counsel.

Accomplishments: During FY 1989, a total of 108 whistleblower disclosure allegations were received. Allegations from anonymous sources, from non-Federal sources and sometimes allegations of which an agency is already aware and has taken or is taking appropriate action thereon, are sent to the agencies. By the end of FY 1989, 77 disclosure matters were referred to the agencies concerned. Reports of action taken on referrals received from the agencies during 1989 indicate that sufficient substance was found to warrant the taking of remedial action by the agency concerned in over 50 percent of the statutory referrals.

The relatively high proportion of positive results reported by agencies may be attributable to the effectiveness of the front-end review of potential whistleblower disclosures by the Complaints Examining Unit (CEU); close coordination between the CEU and the Investigation Division Disclosure Unit; intensified follow-up contact with complainants to obtain more specific and clarifying information; effective liaison, consultation and coordination with agency Inspectors General; better utilization of the expertise of the Investigation Division staff; and more systematic follow-up with agencies concerning disclosures transmitted to them under the statute.

Management Goals for FY 1991

Past improvements in processing methods and administrative efficiency allowed the OSC to reduce its FTE from 124 in FY 1981 to 86 in FY 1983 and to cope more effectively with its workload. This condition changed in FY 1987 when further FTE reduction began. The reduction in on-board strength to the authorized level of 76 FTE for FY 1988 had a deleterious effect upon the productivity of the OSC operations. The decrease resulted in a deterioration of the timeliness of the OSC response to complaints. Increases of 5 FTEs in FY 1989 and 5 FTEs in FY 1990, coupled with the new responsibilities and priorities under the WPA, are not expected to be sufficient to reduce processing time to acceptable levels.

The request for an additional 15 FTE positions in FY 1991, an increase from a currently authorized ceiling of 86 FTE positions, is based on the need to ensure that the OSC is able to meet the requirements of the new Act, maintain at the current level the number of field investigations which must be completed and reduce the average age of the pending workload. By the end of FY 1989, 182 field investigations were completed. This is an increase of 60 percent over the number completed in the same period for FY 1988. However, the average age of matters under field investigation continued to rise from 280.2 days at the beginning of the fiscal year to 333.5 days at the end of FY 1989. The increased FTE was not sufficient to enable the Complaints Examining Unit to improve the workload figures for matters under initial review, or for the Prosecution Division to reduce the average age of matters undergoing legal analysis. The average age of matters under initial review increased 10.8 percent and the number of pending matters increased from 176 at the beginning of the fiscal year to 267. This is an increase of 51.7 percent. During the same time period, the number of matters undergoing legal analysis increased to 35.7 percent and the average age increased from 438.8 days to 490.5 days. The increase in FTEs for FY 1990 was provided to stem the aging of complaints received under the CSRA. However, to fully implement the WPA, OSC will require additional staff to improve timeliness in the processing of all cases.

Although the OSC has worked to reduce the time required to investigate complaints, the time restrictions and responsibilities added by the WPA have made it impossible for the OSC to meet its objectives without a significant increase in personnel; therefore, the office must have the increased FTE and funds contained in the budget request to achieve its goals of producing quality investigations of complaints by the office in a timely manner.

Selected Workload Data

Activity and Principal Workload Factors	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate	Percent of Increase over 1990
1. Hatch Act Complaints				
Received	102	107	112	5
Closed	88	92	96	5
Prohibited Practices Complaints				
Received	1,058	1,111	1,167	5
Closed	988	1,037	1,088	5
3. Whistleblower Allegations				
Received	108	113	119	5
Closed	109	114	120	5

TUESDAY, MARCH 13, 1990.

U.S. MERIT SYSTEMS PROTECTION BOARD

WITNESSES

DANIEL R. LEVINSON, CHAIRMAN
MARIA L. JOHNSON, VICE CHAIRMAN
LUCRETIA F. MYERS, EXECUTIVE DIRECTOR
MARY L. JENNINGS, ACTING GENERAL COUNSEL

OPENING REMARKS

Mr. ROYBAL. The committee will come to order.

The committee is in session this morning to hear from the U.S. Merit Systems Protection Board. I would ask Mr. Levinson to proceed in any manner that he may desire.

Mr. LEVINSON. As always, Mr. Chairman and Mr. Skeen, I am very pleased to appear before you today to discuss the Merit Systems Protection Board's appropriation request for fiscal year 1991.

Before beginning, I would like to introduce the other individuals from the Board who are with me at the table.

At my far left is my colleague, the Vice Chairman of the Board, Maria Johnson, and to my immediate left is the Executive Director of the Board, Lucretia Myers.

As you know, the Civil Service Reform Act established the Board to insure that Federal employees are protected against abuses by agency management and that the integrity of the Federal merit systems is maintained. The Board performs this function primarily by hearing and adjudicating appeals from personnel actions taken by Federal agencies.

Please know as well that under the Whistleblower Protection Act of 1989, the Board now has jurisdiction over appeals from whistleblowers who have exhausted their right to pursue remedies through the Office of Special Counsel.

The Civil Service Reform Act also mandates that the Board review the significant actions and regulations of the Office of Personnel Management and conduct studies of the merit systems.

Briefly, let me explain what the Board is requesting for fiscal year 1991 in terms of dollars and FTEs. The appropriation request is for $22,564,000, and 334 full-time equivalent workyears, FTEs.

This request represents an increase of $1,577,000 over the fiscal year 1990 appropriation and an increase of five FTE. The increases that we are seeking are designed to cover the following new costs for the Board: Increases in health insurance and the Federal Employees Retirement System (FERS), one-half of the cost of the January 1991 pay raise; the cost of the extra compensable day in 1991, and inflationary increases in support costs.

The Board is also seeking $500,000 to maintain its ADP capability, and $350,000 to cover the costs of the five added FTEs that we seek for our FTE ceiling.

In addition, the Board is requesting an increase in the limit on reimbursements from the Civil Service Retirement and Disability Trust Fund from $1,450,000 for the current year to $1,500,000 for fiscal year 1991.

Mr. Chairman, the Board estimates that in the coming fiscal year, the Board will issue approximately 8,000 decisions on initial appeals, and approximately 1,400 decisions on petitions for review. That latter number refers to cases that the three-member Board sitting in Washington will review and adjudicate. We estimate, changes to the law notwithstanding, that we would expect those numbers to be reasonably firm. They are based, in large part, on the numbers we have seen from prior fiscal years and this past year.

In the last fiscal year for which we have full numbers, the Board's judges around the country averaged 76 days to issue decisions on initial appeals, and 99.7 percent of the cases were decided within the 120 days that the Board imposes on itself to hear and decide appeals.

Many of the more complex cases, of course, result in a further appeal to the Board here in Washington. During fiscal year 1989, the Board averaged 183 days to adjudicate those cases.

I am pleased to report to this committee that we have continued to enjoy concurrence in our civil rights related decisions by the Equal Employment Opportunity Commission. In fiscal year 1989, the EEOC concurred in over 99 percent of the Board's decisions that they reviewed.

I am also pleased to note that during the most recent fiscal year, 94 percent of the Board's decisions that were appealed to the United States Court of Appeals for the Federal Circuit were left unchanged.

If I can speak briefly about our merit systems studies function, over the past fiscal year, the Board has issued four reports pursuant to its statutory mandate. It has included such subjects as Federal employee turnover, first line supervisory selection, the operation of the merit system at the Tennessee Valley Authority, and a retrospective assessment of major activities of the Office of Personnel Management during its first ten years of operation.

I have always enjoyed and been challenged by the exchange that we have here at this table regarding the Board's appropriation request. I will simply ask that my full statement be incorporated into the record. With that, I am happy, as my colleagues are, to entertain any questions you may have.

Mr. **Roybal**. Thank you, Mr. Levinson. The entire text of your testimony will be included in the record at this point.

[The information follows:]

U.S. MERIT SYSTEMS PROTECTION BOARD
Washington, D.C. 20419

STATEMENT OF

DANIEL R. LEVINSON

CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD

BEFORE THE SUBCOMMITTEE ON TREASURY,

POSTAL SERVICE & GENERAL GOVERNMENT

COMMITTEE ON APPROPRIATIONS

U.S. HOUSE OF REPRESENTATIVES

MARCH 13, 1990

The Bicentennial of the U.S. Constitution 1787-1987

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the fiscal year 1991 appropriation request for the U.S. Merit Systems Protection Board.

As you know, the Civil Service Reform Act (CSRA) established the Board as an independent agency vested with broad authority to ensure that Federal employees are protected against abuses by agency management and that the integrity of the Federal merit systems is maintained. As part of this statutory mandate, the Board hears and adjudicates appeals from personnel actions taken by Federal agencies. The range of appealable actions is wide-- including adverse actions for misconduct, performance-based removals or downgrades, OPM determinations in retirement matters and OPM suitability determinations, reductions in force, denials of within grade increases, and denials of restoration to duty or re-employment rights. Under the Whistleblower Protection Act of 1989, the Board also has jurisdiction over appeals from whistleblowers who have exhausted the Office of Special Counsel procedures.

The CSRA also mandates that the Board review the significant actions and regulations of the Office of Personnel Management and conduct studies of the merit systems to ensure that they are kept free of prohibited personnel practices and are in accord with the merit system principles. As required by statute, the Board submits its special studies and OPM oversight reports to the President and Congress.

The Board's request for funding is explained in detail in the budget justification that has been submitted to you. To summarize, the Board is requesting an appropriation of $22,564,000 and 334 full-time equivalent workyears (FTE). The request represents an increase of $1,577,000 over the fiscal year 1990 appropriation and an increase of 5 FTE.

Much of the additional funding sought by the Board is for unavoidable cost increases: increases in health insurance and the Federal Employees Retirement System (FERS); one-half the cost of the January 1991 pay raise; the cost of the extra compensable day in 1991; and inflationary increases in support costs. For the first time in several years, the Board is also requesting additional funding for other than uncontrollable cost increases. The Board seeks $500,000 to maintain its automated data processing capability and $350,000 to cover the cost of five additional FTE needed for its increasing workload. In addition, the Board requests an increase in the limit on reimbursements from the Civil Service Retirement and Disability Trust Fund from $1,450,000 for fiscal year 1990 to $1,500,000 for fiscal year 1991. Raising the limitation will allow the

Board to cover the increasing costs of adjudicating retirement appeals.

The Board estimates that in fiscal year 1991, it will issue approximately 8,000 decisions on initial appeals and approximately 1,400 decisions on petitions for review. The projection for initial appeals reflects an increase in receipts in the most recent fiscal year. The projection for petitions for review assumes that the workload will remain relatively stable. The Board's workload will also include original jurisdiction cases, including Special Counsel actions and actions against administrative law judges, interlocutory appeals, stays, court remands, cases reopened by the Board on its own motion, and compliance referrals from regional offices. In addition, the Board will handle cases involving its jurisdiction and procedures before the United States Court of Appeals for the Federal Circuit.

Although the Board's workload projections take into account the impact of legislation that has been enacted by the Congress, they assume no other major changes in personnel law or policies that would significantly affect the Board's caseload. Any legislation or policy decisions that require agencies to absorb the costs of pay increases may result in furloughs or reductions in force that, in turn, could produce more appeals to the Board.

In fiscal year 1989, the Board's administrative judges averaged 76 days to issue decisions on initial appeals, and 99.7 percent of the cases were decided within 120 days, the Board's self-imposed time standard. Many of the more complex cases result in a further appeal to the three-member Board in Washington. During fiscal year 1989, the Board averaged 183 days to adjudicate these cases.

The Board's decisions on civil rights issues that accompany civil service appeals continue to be concurred in by the Equal Employment Opportunity Commission (EEOC). In fiscal year 1989, the EEOC concurred in over 99 percent of the decisions reviewed. The Board's decisions also continue to be upheld by the courts at an overwhelming rate. During the most recent fiscal year, 94 percent of the Board's decisions appealed to the United States Court of Appeals for the Federal Circuit, which hears nearly all Board appeals, were unchanged.

In fiscal year 1989, the Board issued four reports pursuant to its special studies and OPM oversight responsibilities, covering such subjects as Federal employee turnover, first-line supervisory selection, the operation of the merit system at the Tennessee Valley Authority, and a retrospective assessment of major activities of the Office of Personnel Management in its first 10 years of operation. These reports are not only submitted to the President and the Congress, as required by statute, but have also acquired a large audience among Federal agency heads and personnel officials, public interest groups, academicians, the private bar, and employee associations.

The Board's requested appropriation for fiscal year 1991 will enable the Board to continue to fulfill its statutory responsibilities, including the responsibilities resulting from recently enacted legislation, with the efficiency and effectiveness that Federal employees and agencies expect and deserve.

Thank you, Mr. Chairman. I would be pleased to answer any questions you may have.

MSPB JURISDICTION

Mr. **Roybal**. Mr. Levinson, you have stated that one of the purposes in the organization is to protect employees against abuses. Is that the only purpose?

Mr. **Levinson**. That is the primary purpose for which the Board was established. Everything the Board does, by statute, needs to be tied into the notion that the Board is preventing the merit principles from being violated and protecting the merit systems from abuse. The concept of protecting the merit systems is an integral and key part of virtually everything the Board does.

Mr. **Roybal**. Once a conclusion is reached—and I think you told the committee there were 8,000 decisions this last year—do you have any authority to enforce that conclusion?

Mr. **Levinson**. Yes. The Board has enormous authority to enforce its decisions. In fact, if agency management refuses to adhere to what the Board directs in terms of corrective action, the Board has the power to remove the manager in charge from the payroll. Our authority is quite comprehensive.

APPEAL RIGHTS

Mr. **Roybal**. All right. What about the right of appeal? Supposing the person that wanted to be protected from abuse felt ultimately that he was not, and wanted to appeal. Does he have the right to appeal?

Mr. **Levinson**. If the employee comes to the Board and has his case heard at the regional level, which is where most of our cases are heard, and the employee loses, he or she has an absolute right to appeal to the three-member Board, here in Washington. If the employee still does not prevail, he or she has an absolute right to have that case appealed to the U.S. Court of Appeals for the Federal Circuit, which is a specialized court that sits here in Washington only, and hears cases from the MSPB as well as certain other specialized courts and tribunals.

Mr. **Roybal**. What has been your experience with regard to appeals? Do you usually find that the request for an appeal was well taken?

Mr. **Levinson**. With respect to the initial appeal by the employee?

Mr. **Roybal**. What I am looking for is this. Have you overruled in any instance, or in how many instances have you overruled the conclusion made by the administrative judge?

Mr. **Levinson**. In the typical case, when an employee appeals to the Board, the case is heard at the regional level by an administrative judge. Administrative judges decide in favor of the agency in the neighborhood of 75 to 80 percent of the time. Perhaps in one out of five cases heard by our regional judges, the agency would either lose the case outright, or its decision will in some shape or manner be changed.

That basic 80 percent affirmance rate for agencies is about the same at the Board level here in Washington, too.

Mr. **Roybal**. By the Board level, you are talking about the three people that you made reference to?

Mr. **Levinson**. Yes, sir.

Mr. ROYBAL. In approximately 80 percent of the cases?

Mr. LEVINSON. In approximately 80 percent of Board cases, and this would be true, both at the regional level and at the Board level here in Washington, management will prevail about 75 to 80 percent of the time. That is a figure based on trends over the last three or four years at least.

Mr. ROYBAL. All right. Management then prevails 75 percent of the time, which means that the employee prevails only 25 percent.

Mr. LEVINSON. The employee will receive some kind of relief, yes, on average, in about one out of four or one out of five cases.

Mr. ROYBAL. He might get some kind of relief, maybe, but is he satisfied?

Mr. LEVINSON. In many of those cases in which management is overturned, the employee wins outright, and he is restored to his job. For example, if he was removed, he is restored to his job with full compensation and back pay, and benefits.

Mr. ROYBAL. How often does that happen, where the employee does win when he goes before the three? Ten percent of the time? Five percent of the time?

Mr. LEVINSON. The percentage of cases in which the employee is removed from payroll?

Mr. ROYBAL. Where he wins, where you rule in his favor.

Mr. LEVINSON. The reason why I am using rather vague language regarding employees' receipt of some relief is because in many cases in which the employee wins, he is not winning everything that he seeks. He may be winning some of that which he seeks. For example, if in a misconduct case, the agency seeks to remove the employee, it is possible upon Board review, that the Board will decide that the employee did engage in some kind of misconduct. As a result of that, the agency properly thought it should be taking some kind of action against the employee.

But, given the misconduct involved, the Board may determine that the discipline was too severe, and it will therefore mitigate the penalty. So that, instead of removing the employee, the employee will be demoted or perhaps will be suspended.

SUCCESS RATES BEFORE THE BOARD

Mr. ROYBAL. In other words, what I am trying to determine is whether or not it is worthwhile for the employee to even appeal to you. If he is going to lose, why appeal? It seems to me that what you are telling me is, yes, he has a chance; and that he does, in fact, win, even though he is not completely exonerated. Nevertheless, his punishment is reduced a fair percentage of the time.

Mr. LEVINSON. That is correct. I would further add that in my brief travels around the country when I meet with my colleagues at the state and local level who do this kind of work, people, say at the California Fair Employment Practices Commission or in the Maryland Public Employees Board, and I ask them what are their percentages? How often does the agency prevail in those state and local government proceedings? I hear about the same number. Actually, I hear somewhat higher numbers; agencies tend to prevail at the state and local level at an even higher rate than they do at the Federal level.

But, of course, the Executive Branch is a big branch of the government. We have some agencies that prevail more often than others. We publish those figures annually so that agencies can get some measure of how they are doing, both within their own agency and as compared to other executive agencies.

Ms. JOHNSON. Could I make a comment, Mr. Chairman?

Mr. ROYBAL. Go ahead.

Ms. JOHNSON. One of the reasons the rate may seem slanted against the employee, or, as some people have said, slanted towards the agency—As you know, this is my seventh year here testifying before this committee. I came to MSPB from the private sector. So, it was a very interesting process to observe the rights that were afforded to Federal employees, which is not the way it is in the private sector.

The cost of bringing a disciplinary action against an employee has become prohibitive to an agency because the MSPB, over our ten-year history, has put together a comprehensive body of case law. We have made it very clear to the agencies what they can and cannot do in disciplining employees.

Agencies are hesitant to bring disciplinary actions against employees unless they have a very strong case and feel a very strong likelihood of success. The penalty for losing a case can be substantial. Attorney fees of $25,000 to $30,000 have been awarded; back pay awards of $50,000 to $60,000 have also been awarded.

Mr. ROYBAL. Who pays that?

Ms. JOHNSON. The agency has to pay it if we make a determination that they wrongfully discharged an employee. If they should have known that it was a wrongful discharge, they can be liable for the attorney fees.

Mr. ROYBAL. Shouldn't they be?

Ms. JOHNSON. Oh, I am not saying that they shouldn't be. I agree with that. What I am saying is, agencies are aware of the cost of making a mistake and bringing an adverse action against an employee who is not a poor performer, my observation is, that agencies do not bring a disciplinary action unless they have a very strong case and a very strong reason to bring the case. They do not bring the weak cases to the Board. They will just try to work with that employee, rather than run the risk of losing because they have too much to lose.

It is not unheard of for an agency to have to pay $100,000 for bringing a case that they should not have brought. That is a deterrent. Consequently, the cases that come to the Board are the stronger cases. I think that a 25 percent rate in favor of the employee is actually high. I think that some agencies are being even more cautious about the cases that they bring. I think that employees' rights have been very well protected. And, as the law becomes more clearly defined, and we venture into new areas and make definitive rulings on areas that have not been dealt with before, their rights become clearer.

We have engaged in outreach programs in the past where we have tried to make it clear to people what their rights and remedies are. I think, in many instances, employees do not bring appeals to the Board if the employee feels that his case is weak.

In sum, agencies tend not to bring the weak cases to the Board, and employees generally do not bring weak cases.

BOARD REVIEW PROCEDURES

Mr. **Roybal**. Let's take a case that the employee lost, the agency was correct, then it goes through you. Does the mere fact that it is going to cost that agency some money have anything to do with the decision that you made?

Ms. **Johnson**. None whatsoever. None whatsoever. I am totally unconcerned about that.

Mr. **Roybal**. It is taken strictly on its merit?

Ms. **Johnson**. I have always been amazed at how much protection is afforded the employee. By the time a case gets to the three-member Board, I have calculated that it has been reviewed thoroughly by an average of six to seven lawyers, not counting the Board members. By the time a case gets to the Board members, it has been reviewed at the regional level by the administrative judge and by the regional director; at Headquarters, it is reviewed by an attorney in the Office of Appeals Counsel (OAC), by the team leader of that attorney, and then by the head of OAC, or his deputy, and then it gets to the Board member's office, where it is reviewed by the Executive Assistant to the Board member, or by an attorney assigned to the Board member's office, and then further reviewed by the Executive Assistant. Typically, a case is reviewed by seven lawyers, and they take this work very seriously.

They have no problems in overturning a ruling or modifying a proposed disposition. We have extensive procedures for rewriting proposed dispositions. Approximately 20 to 25 percent of the recommended decisions that come from the Office of Appeals Counsel are revised.

So, we are talking about cases that are just reviewed and reviewed, and argued, and hashed over, and agonized over. It is a very extensive and protective process.

Mr. **Roybal**. I think that these cases should be reviewed over and over again to insure fairness.

Ms. **Johnson**. And we take it seriously. We take it very seriously.

Mr. **Roybal**. I do not think that an agency should make a complaint against an individual simply because they do not like the individual for some reason or another. I think that has to be legitimate. What you are telling the committee, is that it is. If they go through a process that finally results, when an accusation is made, in a decision that has some foundation and fact.

The mere fact that it is reviewed by seven lawyers does not impress me at all.

Ms. **Johnson**. The process is meaningful when you look at how much they like to compete against each other and challenge this or challenge that point.

Mr. **Roybal**. But even seven lawyers coming from the same agency could make mistakes. Not only that, but matters of attitude.

Ms. **Johnson**. That's right.

Mr. Roybal. Not things that can be thoroughly understood by getting a law degree.

Ms. Johnson. Oh, you know that.

Mr. Levinson. To be sure, the Board has made mistakes as well. When an employee who has lost before the Board goes to court, once in a while the court will overturn a Board decision. I would agree completely with the Vice Chairman. Over the last ten or eleven years, I think what Congress hoped would happen has happened in our field. It really is advantageous for Federal employees to know that the Board is not so close to the emotional involvements that usually attend personnel actions and that employees have an independent forum in which to seek a full and fair hearing.

CASELOAD

Mr. Roybal. Were there 8,000 appeals that were made last year? How many appeals did you get?

Mr. Levinson. Would that refer to the 8,000 appeals filed?

Mr. Roybal. The 8,000, yes.

Mr. Levinson. Yes, I gave a very broad figure there.

Mr. Roybal. Eight thousand.

Mr. Levinson. That 8,000 number would relate to the number of filings that the Board gets around the country from employees as a result of whatever adverse action they seek to have reviewed. Of those 8,000 filings, probably 40 percent will be dismissed at the regional level for any one of a variety of reasons, perhaps lack of jurisdiction. We simply do not have authority to hear some kinds of actions, or we do not have jurisdiction over the employee.

Mr. Roybal. By "filing", what do you mean?

Mr. Levinson. Once an action is taken against an employee, then the employee has the right in many cases to appeal to the Board. He or she appeals to the Board by filing an appeal in one of our 11 regional offices.

The 8,000 figure is the total of all of the filings that the Board receives from employees throughout the country who are seeking to have some adverse decision reviewed by the Board.

Mr. Roybal. Right. Which means that you have had 8,000 that are actually seeking an appeal.

Mr. Levinson. That is correct.

Mr. Roybal. What is the total number of cases that you had during the time you had 8,000 appeals?

Mr. Levinson. During that same year, we expect that only about 1,400 will come to the Board here in Washington.

BOARD JURISDICTION

Mr. Roybal. But how many cases have you had altogether? You had 8,000 appeals apparently. How many cases?

Mr. Levinson. That is the sum total of appeals that entered into our process. There are only two channels for the Board to have cases before it.

One channel, and this is the primary one, is for employees to exercise their right to appeal to the Board.

The second channel is for employees to complain to the Special Counsel, which is a separate, independent office you will be hearing from later this morning on their appropriation.

Mr. Roybal. What type cases got to the Special Counsel then?

Mr. Levinson. The Special Counsel part of our law concerns primarily the Whistleblower Protection Act, which amended the Civil Service Reform Act just last year. This is a subcategory of our field.

If an employee is seeking relief from alleged whistleblowing, the employee is to go to the Special Counsel first, the Special Counsel will investigate the allegations and then, in turn, may bring an action on the employee's behalf before the Board.

PENDING CASES

Mr. Roybal. Let's see if we can get an answer by going another way. How many cases do you have pending now?

Mr. Levinson. Before the Board in Washington or total cases including the regions?

Mr. Roybal. Wherever it goes first?

Mr. Levinson. Would we have a total we could give the Chairman?

[Pause.]

Mr. Roybal. Perhaps you can provide that for the record.

Mr. Levinson. I will be pleased to do that.

Mr. Roybal. Give the committee the number of cases that you have pending now, a breakdown of those cases by type, and then what is your estimate of how long it would take to process these cases from the date of filing to decision and completion.

Mr. Levinson. Yes, we will be happy to provide that information.

Mr. Roybal. I think that gives us an idea of what –

Mr. Levinson. It would be a snapshot.

Mr. Roybal. Yes.

Mr. Levinson. Of course, cases are being filed and decided everyday. We can give you, I think, a snapshot.

[The information follows:]

As of February 28, 1990, there were 961 cases pending Board action at Headquarters and 1,492 cases pending in the regions.

We estimate that all of the regional cases will be decided within 120 days of their receipt, with most of them decided sooner. The average processing time for cases in the regions was 76 days in FY 1989. With respect to the Headquarter's cases, the average processing time for FY 1989 was 183 days. On average, we would expect the cases currently pending to be resolved within a similar time frame.

Mr. Roybal. Give us a general idea of just exactly what is being done. One thing I think we are going to get out of this, and that is that we can stipulate to the fact that employees have a darn good chance of getting a fair deal in the process that you set.

Don't forget, I use the term "Have a darn good chance of getting a fair deal." I have not said they're getting it yet. Mr. Skeen.

MERIT SYSTEMS STUDIES

Mr. Skeen. Thank you, Mr. Chairman and Mr. Levinson, and folks. It is good to be with you. I appreciate your response.

Last year, your report that is entitled, "Who is Leaving Federal Government", seems to offer some contrary opinions as to whether there exists a problem in the personnel retention and recruitment.

Can you give me some idea of where the most serious problems are, and where we are doing a better job in contrast? I would like to get some kind of an idea about what kind of balance we have.

Mr. LEVINSON. We have someone who has devoted a fair amount of time to that right here in the room. If I could ask Van Swift, our Director of Policy and Evaluation, to come to the table and respond to that question.

Mr. SKEEN. That is what you bring all these folks here for anyway, to use them.

Mr. LEVINSON. She is most prepared.

Ms. SWIFT. One finding we found rather surprising regarding who was leaving. A lot of people believed that those in the engineering and scientific fields were leaving at a rapid rate because of——

Mr. SKEEN. Pay differentials.

Ms. SWIFT. Yes. And we found that that the general perception was not true. This is the first study that was ever done of employee turnover. It was based on the actual statistical picture, compiled by the Office of Personnel Management, of everybody who left during calendar year of 1987. Pay differential was the main reason.

Mr. SKEEN. Between the private and public sector?

Ms. SWIFT. Excuse me?

Mr. SKEEN. Between the Federal or our private and public service, the pay differential?

Ms. SWIFT. We only looked at the——

Mr. SKEEN. No, I know. But you are saying that, you are assuming, from your studies, that that is the reason, the pay differential?

Ms. SWIFT. That is correct.

Mr. SKEEN. Yes.

Ms. SWIFT. That is correct. It has not been published yet, but we have recently done a survey of a snapshot of last summer. We took a picture between the months of June, July, and August of why people were leaving. That should be out for publication soon. It is in draft, and it will be out for publication in the next couple of months.

Mr. SKEEN. We would like to have copies of that.

Ms. SWIFT. In any event, it shows that the majority of people who are leaving are leaving because of the pay differential. That is, the resignations. And these are outstanding people. The important thing about it was that the majority of the people who filled out the questionnaire were outstanding, and had outstanding ratings, the very people that we wish to capture and keep within the Federal Government.

Mr. SKEEN. Give me some idea of what GS levels we are talking about? All over the whole gamut?

Ms. SWIFT. It was the whole gamut.

Mr. SKEEN. The whole gamut, including career, those that had been in career positions and so forth.

Ms. SWIFT. Oh, yes. It was who left.

Mr. SKEEN. That is who left?

Ms. SWIFT. Yes, sir.

Mr. **Skeen**. Good. That is a very good response, and I would like to have copies of the studies that you are in the process of putting together.

WHISTLEBLOWER PROTECTION ACT CASES

I think it shows you are requesting an increase of $350,000 for processing cases under the Whistleblower Protection Act. Is that correct?

Mr. **Levinson**. Yes. In part, certainly.

Mr. **Skeen**. Yes. What is happening on your caseload there? I know that you mentioned it, but give me some kind of an abstract on what the case load is and how effective the protection of it has been?

Mr. **Levinson**. With respect to the new law, Mr. Skeen?

Mr. **Skeen**. Yes, sir. The whistleblower law.

Mr. **Levinson**. At this point, we have had about 100 filings nationwide. We are still in the very early stages of seeing the law operate on a day to day basis. The law still requires that those who are going to use the whistleblower law go to the Special Counsel first to seek relief.

Mr. **Skeen**. Because you have that provision.

Mr. **Levinson**. There is a period that employees still must work with the Special Counsel before they have any right to independently come before the Board. So, notwithstanding that the law has been on the books since July, we only entered a period in which we might be receiving these individual right to appeals to the Board this past fall.

As I say, we are now starting to see these cases. We have several score in process. And we are only beginning at the Board level, here in Washington, to address one or two of the novel issues that are coming up with respect to how the law should work.

Most of the cases, at this point, have been handled at the regional level, much like filings for any of our other kinds of appeals.

Mr. **Skeen**. You have not had them appeal to your Board?

Mr. **Levinson**. We are now getting some of them before the Board, but we are at a fairly early stage, though, with respect to adjudicating these cases.

Mr. **Skeen**. So you have not had a large precedent to work with, a large number?

Mr. **Levinson**. We have not. We have really only had a handful of cases that have presented, in a full way, issues under the new law.

WHISTLEBLOWER PROTECTION ACT VOLUNTARY SETTLEMENTS

Mr. **Skeen**. Have they been settled, most of them, at the preliminary level?

Mr. **Levinson**. We have had a number of settlements.

Mary Jennings, would you have numbers?

Ms. **Jennings**. I do not have that information at my fingertips.

[The information follows:]

From July 9, 1989, the effective date of the Whistleblower Protection Act, through March 16, 1990, 21 cases involving whistleblower allegations have been settled.

Mr. Skeen. One last question in regard to that, if you could get that information for us, I would like to have it for the record.

The other thing is, I know that you have had a very small number of cases, and it is very difficult to make any great number of conclusions.

Following through on those cases, what has been the after effect on this thing after they were settled? Do you have any general conclusions as to whether when the whistleblower goes back to work or something, what is the follow through as far as the treatment on the job?

Mr. Levinson. It is not possible sitting where I sit to be able to give you a very comprehensive answer to that.

Mr. Skeen. Evidently not, because you have not had that much reflection.

Mr. Levinson. Although I do not mean to throw the ball in the Special Counsel's court, there is a better chance that this point could be addressed by their office.

Mr. Skeen. Well, let the Special Counsel do it.

Mr. Levinson. There is a better chance at this point that, because these cases in the first instance go to the Special Counsel and there is at least a reasonable chance that settlement may occur via that office, the Special Counsel's office may be able to give you a better informed opinion about this issue.

Let me add quickly, I apologize for not introducing the Acting General Counsel before.

Mr. Skeen. We were going to get over there. I appreciate you doing that.

Mr. Levinson. Mary Jennings, our Acting General Counsel, also joins us at the table.

VOLUNTARY SETTLEMENTS

Mr. Skeen. Yes. Last year we discussed the trend toward settling cases, and I think that you alluded to it in your testimony, but give me some summary, too, on how that is going. Are your judges succeeding in their efforts to get the parties to settle their decisions?

Mr. Levinson. Yes, they are, Mr. Skeen. We continue to enjoy very impressive settlement numbers. The figures generally are the same in most regions, which means we have a very reliable, uniform process by which administrative judges seek to settle cases.

The total settlements for Fiscal Year 1989, out of nearly 7,000 initial appeals was over 2,000; 29 percent of our initial appeals settled. For our field, and, given that, historically, settlement was not an area in which agencies were particularly interested, we view that 29 percent figure as a very solid one.

COURT REVIEW

Mr. Skeen. Significant. Given the fact that—and check with me and see if I am understanding correctly what you said earlier—94 percent of the decisions that you have made have been upheld in the Appeals Court, that have gone through the entire process. Is that correct?

Mr. Levinson. That is correct.

Mr. Skeen. That is a very, very good figure.

Mr. **Levinson**. Yes, we are very proud of that number. It has held steady over these last few years. I think it stems, in part, from the benefits that flow from having only one Appeals Court in which to have these cases reviewed. I think that works very well, because it gives the Board very clear direction on important issues.

From one Appeals Court, we have our marching orders. But I think it also stems from very conscientious work done by administrative judges around the country.

Mr. **Skeen**. Evidently. After Ms. Johnson was telling us about the process that you have gone through, you are certainly not guilty of what the lawyers like to call casual or callous indifference? Anything but that.

BASE CLOSINGS

One last question, and this is for Mr. Lowery, who is not able to be here today. What types of cases do you anticipate are going to result from these base closings on the defense base closings? Have you had any indications that you are going to have a large number of cases evolve from the closings of these bases?

Mr. **Levinson**. The possibility of RIF appeals coming our way in substantial numbers, certainly, is the first thing that we think of when we hear that.

Mr. **Skeen**. You will be very busy.

Mr. **Levinson**. I think that could substantially increase our work load. Of course, we have not seen it yet. We have tried to come up with modest figures for you to look at for the coming fiscal year. We are not going to try to build in requests for monies that we cannot justify before you today, but that does raise the possibility of substantial increases in appeals.

Mr. **Skeen**. I have serious concern about it. Can you handle the type of flex-up that you may have in those kinds of cases, at least in a preliminary sense.

Mr. **Levinson**. We think with this request before you now, this is a good faith estimate of what will get us through unless numbers change substantially from what we have.

Mr. **Skeen**. Dramatically.

Mr. **Levinson**. Yes.

Mr. **Skeen**. All right. We thank you very much. Thank you, Mr. Chairman.

BUDGET REQUEST

Mr. **Roybal**. Thank you, Mr. Skeen. Mr. Levinson, one last question, and this is with regard to your increase in the budget of $1,627,000. Because of fiscal restraints, it is going to be difficult to increase the budget by any amount. We don't know what our 302(b) allocations are going to be yet, so we cannot say for sure, but there is always hope.

Supposing we could not do it? How would you get along without that $1.6, $1.7 million?

Mr. **Levinson**. With difficulty, Mr. Chairman. This is the case that we made before OMB as well. They were being tough when we sat down with them several months ago to look at our figures.

Mr. **Roybal**. But you asked OMB for more than that, did you not?

Mr. **Levinson**. Yes. We did. And that is a further demonstration of how important these figures are, for OMB, notwithstanding their very sharp pencils, understood that these were bottom line figures that the Board really needs to do its work well.

Mr. **Roybal**. Will you be able to do more than you are doing now, if you got that $1.6 million?

Mr. **Levinson**. With these figures, we expect that we will be able to do the kind of job we have been doing in the coming year.

Mr. **Roybal**. I see where you are going to have to use approximately $350,000 for the five positions. Besides that, what will you use the rest of the money for?

Mr. **Levinson**. We have noted several costs that are simply going up for the Board and that either have to be absorbed from our current levels or for which we need new funding. We are asking for new funding to cover matters like the additional cost of FERS and an extra compensable day.

The highest figure involved here is the half million dollars that we are seeking to maintain our Automated Data Processing base. I underscore the word "maintain". Much of our computer operation is, at least by current standards, obsolete. It is very important for the Board to maintain the kind of telecommunications network that allows us to do our business as efficiently as we are able to.

That figure is a key one, and the loss of that money would have, unquestionably, an adverse impact on our ability to process cases with efficiency.

Mr. **Roybal**. But that would total to $850,000?

Mr. **Levinson**. Yes. The balance concerns the increases in costs that I mentioned before, like FERS and the extra compensable day. I will be happy to run down that list.

Beyond that $850,000 is $188,000 for the inflationary increase in support costs. I believe that figure reflects OMB's set formula for inflation. One-half the cost of the January 1991 pay raise, which accounts for $364,000; another $60,000 for the increased cost of FERS in 1991, the Federal Employment Retirement System; $51,000 for added health insurance costs, and $64,000 for the extra compensable day in 1991.

Mr. **Roybal**. Mr. Levinson, I would like to thank you for your testimony. The committee will take this request under advisement, and we hope that we will be able to comply.

Ms. **Johnson**. Mr. Chairman, if I could just say my goodbyes.

Mr. **Levinson**. Thank you, Mr. Chairman.

Ms. **Johnson**. This is my seventh and last year.

Mr. **Roybal**. Is that right?

Ms. **Johnson**. My term expired March 1st. It has been an honor to have been a Board member at this time, and working with this committee has been a pleasure. I hope any future committee dealings I have, if I stay in this Federal Government, will be as pleasant as the last seven years have been with your committee.

Mr. **Skeen**. The feeling is mutual.

Ms. **Johnson**. Thank you, sir.

Mr. **Skeen**. Thank you.

Mr. **Roybal**. I say that we have not only enjoyed having you, but the questions that you have answered have been most proper. I think you know what you are doing. I hate to see you go any place else. I hope that you are not one of those employees who is leaving the Federal service.

Ms. **Johnson**. No problem there. I will wave the flag for MSPB one final time.

Mr. **Roybal**. All right.

Ms. **Johnson**. We are sort of like the IRS. When the Government budget is tight, IRS should have more money to hire more people to collect taxes.

Mr. **Roybal**. That is what we think.

Ms. **Johnson**. Right. Now MSPB is sort of a counterpart, because, with the budget cuts that are going to be made, as you carefully pencil in your figures, there are going to be more RIFs, not just at DOD, but throughout the Government. It would be a savings to increase our budget. It would actually save the Government overall, because it would allow us to deal expeditiously with the RIF appeals and the other areas that will be challenged more frequently as a result of it. So if you give us more money, we can help you save money overall.

Mr. **Skeen**. Maria, I hope that you are going into sales.

Mr. **Roybal**. Thank you very much. Thank you, Mr. Levinson.

Mr. **Levinson**. Thank you, Mr. Chairman.

Mr. **Roybal**. Good luck to you.

Ms. **Johnson**. Thank you, sir.

[The justifications follow:]

U.S. Merit Systems Protection Board

1883

BUDGET JUSTIFICATION
FISCAL YEAR 1991

Submitted to the
Committees on Appropriations

28-217 950

THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

January 29, 1990

Dear Mr. Chairman:

Pursuant to Public Law 95-454, we are submitting to the appropriate committees of the Congress an annual appropriations justification for the U.S. Merit Systems Protection Board. The fiscal year 1991 appropriations request will permit the Board to carry out its responsibilities, under the Civil Service Reform Act of 1978, to protect the integrity of merit systems principles throughout the civil service.

The fiscal year 1991 request totals $22,564,000 and 334 full time equivalents (FTE's). Details of this request are contained in the enclosed justification package.

I look forward to discussing this request with you and your subcommittee.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson

Enclosure

The Honorable Edward R. Roybal
Chairman, Subcommittee on Treasury,
  Postal Service and General Government
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Bicentennial of the U.S. Constitution 1787-1987

THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

January 29, 1990

Dear Mr. Chairman:

Pursuant to Public Law 95-454, we are submitting to the appropriate committees of the Congress an annual appropriations justification for the U.S. Merit Systems Protection Board. The fiscal year 1991 appropriations request will permit the Board to carry out its responsibilities, under the Civil Service Reform Act of 1978, to protect the integrity of merit systems principles throughout the civil service.

The fiscal year 1991 request totals $ 22,564,000 and 334 full time equivalents (FTE's). Details of this request are contained in the enclosed justification package.

I understand that our staffs have already arranged a meeting to discuss this request.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson

Enclosure

The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury,
  Postal Service and General Government
Committee on Appropriations
United States Senate
Washington, DC 20510

U.S. MERIT SYSTEMS PROTECTION BOARD

FISCAL YEAR 1991

CONGRESSIONAL

BUDGET JUSTIFICATION

TABLE OF CONTENTS

Page No.

U.S. MERIT SYSTEMS PROTECTION BOARD

I. Summary by Budget Activity.................... 1

II. Increase by Budget Activity from 1990 to 1991. 2

III. Obligations by Object Class.................. 3

IV. Appropriation Language........................ 4

V. Overview

  A. Functions and Activities................ 5
  B. Fiscal year 1991 Appropriation Request....5
  C. Management and Adjudication Improvements 6

VI. Explanation of Budget Activity

  A. Regional Operations..................... 8
  B. Appeals................................. 9
  C. Legal................................... 12
  D. Case Decision and Program Management.... 15

VII. Appeal Rights and Procedures

  A. Appellate Jurisdiction.................. 21
  B. Original Jurisdiction................... 22

VIII. Relationship with other Federal Agencies...... 24

IX. Summary of the 1991 Request.................. 26

U.S. MERIT SYSTEMS PROTECTION BOARD

SUMMARY BY BUDGET ACTIVITY
(Dollars in Thousands)

	1989		1990		1991	
	FTE	AMT	FTE	AMT	FTE	AMT
REGIONAL OPERATIONS	123	$8,413	130	$8,724	130	$9,259
APPEALS	36	2,277	43	2,560	45	2,860
LEGAL	22	1,414	26	1,651	29	1,964
CASE DECISION AND PROGRAM MANAGEMENT	120	8,307	130	7,994	130	8,481
TOTAL	301	20,411	329	20,929 1/	334	22,564
Civil Service Retirement and Disability Fund Limitation 2/	--	1,400	--	1,450	--	1,500

1/ This reflects a sequestration of $58,000 in 1990.

2/ The Merit Systems Protection Board spent approximately $1,600,000 on adjudication of OPM retirement decisions in FY 1989 and expects to spend about $1,700,000 in FY 1990 and FY 1991. Raising the limitation will allow the trust fund to cover more of the cost of administering the appeals process. These appeals raise such issues as eligibility for disability retirement benefits, proper credit for time worked, and restitution in cases of possible overpayment of annuities.

U.S. MERIT SYSTEMS PROTECTION BOARD

INCREASE BY BUDGET ACTIVITY 1990 TO 1991
(Dollars in Thousands)

	REGIONAL OPERATIONS	APPEALS	LEGAL	CASE DECISION & PROGRAM REVIEW	TOTAL
Cost of Additional Staff to process Whistleblower Protection Act cases		+140	+210		+350
Cost of Maintaining the ADP network	+208	+61	+39	+192	+500
Inflation increase in support costs	+78	+23	+15	+72	+188
One half the cost of the January 1991 general Executive and SES pay raises	+152	+45	+29	+138	+364
Additional cost in 1991 of the Federal Employees Retirement System	+25	+7	+5	+23	+60
Cost of the January 1989 health insurance cost increase	+21	+6	+4	+20	+51
Cost of the extra compensable day in 1991	+26	+8	+7	+23	+64
TOTAL	+510	+290	+309	+468	+1,577

U.S. MERIT SYSTEMS PROTECTION BOARD

OBLIGATIONS BY OBJECT CLASS

	1989	1990	1991
Total number of Full-time permanent positions	282	309	309
Full-time equivalent employment	301	329	334
(Dollars in Thousands)			
Average ES Salary	77,370	80,155	97,789
Average GS/GM Grade	11.35	11.35	11.35
Average GS/GM Salary	43,604	45,610	47,662
Personnel compensation:			
Full-time permanent	11,201	12,028	12,590
Other than FTP	957	975	1,003
Other compensation	292	300	304
Subtotal, Personnel Compensation	12,450	13,303	13,897
Personnel benefits	1,670	2,020	2,221
Travel & transprt. of persons	474	667	699
Transportation of things	116	80	83
Rental Payments to GSA	1,673	1,773	1,852
Rental payments to others	55	69	71
Communications, utilities, and miscellaneous charges	558	549	572
Printing and reproduction	166	119	123
Other services	1,325	1,551	1,682
Supplies and materials	254	280	294
Equipment	1,670	518	1,070
Total obligations	20,411	20,929 1/	22,564
Civil Service Retirement and Disability Trust Fund Limitation 2/	1,400	1,450	1,500

1/ This reflects a sequestration of $58,000 in 1990.

2/ The Merit Systems Protection Board spent approximately $1,600,000 on adjudication of OPM retirement decisions in FY 1989 and expects to spend about $1,700,000 in FY 1990 and FY 1991. Raising the limitation will allow the trust fund to cover more of the cost of administering the appeal process. The appeals raise such issues as eligibility for disability retirement benefits, proper credit for time worked, and restitution in cases of possible overpayment of annuities.

U.S. MERIT SYSTEMS PROTECTION BOARD

APPROPRIATION LANGUAGE

General and Special Funds:

SALARIES AND EXPENSES
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and direct procurement of survey printing, $22,564,000 together with but not to exceed $1,500,000 for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board.

U.S. MERIT SYSTEMS PROTECTION BOARD

OVERVIEW

A. FUNCTIONS AND ACTIVITIES

The U.S. Merit Systems Protection Board (MSPB or the Board) is an independent quasi-judicial agency established to protect the integrity of Federal merit systems against partisan political and other prohibited personnel practices and to ensure adequate protection for employees against abuses by agency management. This responsibility is carried out principally by:

a) Adjudicating employee appeals of personnel actions such as removals, suspensions, and demotions;
b) Adjudicating actions brought by the Special Counsel;
c) Adjudicating actions brought under the Whistleblower Protection Act of 1989;
d) Ordering compliance with final orders where appropriate;
e) Conducting special studies of merit systems to determine whether they are free from prohibited personnel practices;
f) Analyzing and reporting on the significant actions of the Office of Personnel Management (OPM); and
g) Reviewing regulations issued by OPM to ensure they do not require or result in the commission of a prohibited personnel practice.

B. FISCAL YEAR 1991 APPROPRIATION REQUEST

MSPB is requesting 334 Full-Time Equivalents (FTE's) and $22,564,000 in appropriated funds, which is $1,577,000 more than was appropriated for fiscal year 1990 before the sequestration of funds. The request includes five additional FTE and $350,000 to carry out the increased workload created by the new Whistleblower Protection Act as well as the increased normal workload generated by external events such as reductions in force carried out by the TVA and planned Defense Department base closings. It also includes $500,000 to maintain and strengthen the ADP network needed in order to sustain the productivity gains achieved in recent years. These funds will allow the Board to replace obsolete equipment and take advantage of new technologies in areas such as telecommunications to continue making improvements in efficiency. MSPB is also requesting adjustments for four built-in cost increases. They are for health insurance ($51,000), the Federal Employees Retirement System ($60,000), the additional compensable day in 1991 ($64,000), and a general inflationary increase in support costs of 3.3 percent ($188,000). The Board is also requesting funds ($364,000) to cover half the cost of the General Schedule, Executive Schedule, and Senior Executive Service pay raises scheduled for January 1991. In addition, we are also requesting an increase in the limitation on reimbursements from the Civil Service Retirement and Disability Trust Fund from $1,450,000 to $1,500,000. This amount will allow the Board to be reimbursed for more of the cost of processing retirement appeals. (The Board spent $1,600,000 in adjudicating these cases in fiscal year 1989 and expects to spend $1,700,000 in fiscal year 1990 and fiscal year 1991.)

The Board expects to spend no more than $100,000 for consultant services, as defined by OMB Bulletin A-120, in 1991. The consultants will assist with the evaluation and/or implementation of various management improvements such as the automation of the internal directive system and a review of the effectiveness of alternative dispute resolution techniques.

In addition to the workload generated by the new Whistleblower Protection Act, the Board expects that the increased number of appeals filed in fiscal year 1989, up over six percent from 1988, will continue into 1990 and 1991. By its nature, the Board must react to events that affect the Federal workplace. For example, during fiscal year 1982, the nationwide air traffic controllers' strike and subsequent mass removals resulted in over 11,000 unanticipated appeals to the Board. During fiscal year 1989, the Board's workload increased because of reductions in force carried out by the Tennessee Valley Authority and at some Defense Department installations. During 1990 and subsequent years, it is possible that the Board's workload could increase significantly above our current projection because of increased reductions in force as a result of governmentwide efforts to reduce the Federal deficit, scheduled Department of Defense base closings, the new Government and Ethics Reform Act which gives Senior Executive Service employees certain appeal rights to the Board, and the proposed Civil Service Due Process Amendments Act which would give excepted service employees appeal rights to the Board.

C. MANAGEMENT AND ADJUDICATION IMPROVEMENTS

The Board continues to emphasize high-quality adjudication and decision making. Specifically, the Board focuses on a strong quality review process, alternate methods of dispute resolution, and uniform jurisprudence throughout its 11 regional offices. The Board concentrates on resolving and issuing precedential decisions in cases involving "major issues." Such issues are those that are novel but occur with some frequency in Board appeals. Their resolution in one or two appeals, therefore, allows for resolution in many other cases.

To foster well-reasoned jurisprudence, the Board is issuing fewer short-form orders that summarily deny petitions for review of initial decisions issued by administrative judges in the regional offices. Rather, detailed opinions and orders are being issued in a greater number of cases. The purpose is to issue decisions on questions of law for which there is no clear authority, even though the outcome in a particular appeal may not change. These precedential decisions are relied on by the Board's administrative judges in subsequent appeals and serve to inform and guide Federal agency managers, employees, and the representatives of each, in taking and defending appealable actions.

Over the next few years, the Board expects to handle new and complex legal issues, such as employee drug testing and treatment. The Federal Employees Retirement System (FERS) is also producing new appeals. Although the present FERS population is small, the issues that the Board will face in FERS appeals are likely to be complex. The novelty of these issues may well require extensive research and analysis.

The Board continues to focus on management improvements to carry out its mission more effectively and efficiently. Among the significant advances is the continued development and expanded use of automated data processing equipment and systems.

U.S. MERIT SYSTEMS PROTECTION BOARD

EXPLANATION OF BUDGET ACTIVITIES

A. REGIONAL OPERATIONS

The 11 regional offices of the Merit Systems Protection Board, under the supervision of the Office of Regional Operations (ORO), are the first stage in the process of hearing and adjudicating Federal employee appeals, including the new individual right of action appeals under the Whistleblower Protection Act. The primary function of the administrative judges in the regional offices is to issue fair, well-reasoned, and timely decisions on appeals. The offices must also respond to inquiries from Federal employees, their representatives, agencies, Members of Congress, and the public.

ORO provides oversight and guidance to the regional offices and ensures that Board policies and programs are implemented at the regional level. In addition to ensuring that appeals continue to be processed within time limits established by the Board, ORO's continuing objectives are: (1) to conduct quality reviews to ensure the issuance of high quality initial decisions; (2) to develop and implement alternative methods of dispute resolution to facilitate settlement; and (3) to promote uniform jurisprudence throughout the regions.

The regional offices have steadily increased their productivity over the past few years because of greater professionalism and automation. Currently, almost all regional office decisions are issued within the Board's self-imposed time limit of 120 days, and the Board expects to maintain that record. The Board received about 7,800 initial appeals in fiscal year 1989, an increase of more than six percent over the previous year. If the upward trend continues, the Board could receive well over 8,000 cases in 1990 and subsequent years. These estimates, which are based on recent experience, do not include additional cases expected as a result of the Whistleblower Protection Act. After the initial start-up, the Board expects to receive about 350 of these cases per year. These cases will raise novel and precedential issues and will, therefore, take more time to process.

To strengthen the quality of initial decisions, there will be continued emphasis on training the Board's administrative judges, particularly in areas where the law is developing (e.g., Federal agency drug testing programs, reasonable accommodation of handicapped employees, the Federal

Employees Retirement System, and the Whistleblower Protection Act). The Board will continue to emphasize training through participation in the National Judicial College, as well as at special conferences for administrative judges.

In support of its objective to encourage uses of alternative means of dispute resolution, the Board will continue its program of training administrative judges in such procedures. Largely as a result of alternative dispute resolution procedures, the rate of settlement in cases not dismissed for lack of jurisdiction or timeliness increased from 6 percent in fiscal year 1984 to 49 percent in fiscal year 1989, and the Board expects continued success with this program.

To address the objective of promoting uniform jurisprudence, ORO will continue to revise and improve standardized orders and to promote uniform procedures throughout the regional offices.

In summary, the requested resource level for this budget activity is intended to support the continued timely processing of Federal employee appeals by the regional offices, the implementation and evaluation of the programs designed to foster settlements, and the high quality of the Board's initial decisions.

B. APPEALS

The Office of Appeals Counsel (OAC) has the principal responsibility for assisting the Board in its review of appeals at the second stage, when an employee, agency, the Director of the Office of Personnel Management, the Special Counsel, or an intervenor petitions the Board to review an initial decision issued by an administrative judge in a regional office. Specifically, OAC analyzes petitions for review (PFR), researches applicable statutes, regulations, and case law, and submits analytical memorandums, proposed opinions, and orders to the Board concerning the disposition of each case. Because the final decisions of the Board are subject to review by appropriate Federal courts (principally the United States Court of Appeals for the Federal Circuit), OAC has a continuing responsibility to review court decisions that discuss or impact upon Board orders so that the office can provide guidance to the Board in its adjudication of future cases.

Board jurisdiction increased markedly with the passage of the Whistleblower Protection Act. The new individual right of action appeals will be heard by an administrative judge at the regional offices, and then, if a petition for review is filed, OAC will assist the Board in consideration of the legal and factual questions raised in these cases. Similarly, the grant or denial of a stay request by an administrative judge may be certified to the Board as an interlocutory appeal. OAC will review interlocutory appeals certified to the Board and draft proposed decisions. Whistleblower appeals will necessarily raise new issues of law, including the interpretation of the statutory provisions and the evidentiary showing required to grant a stay of a personnel action. Because an increase of approximately 350 cases under the Whistleblower Protection Act is projected at the regional level, there will be an increase in the OAC workload as a result of PFR's and interlocutory appeals of decisions on stay requests in these cases.

OAC also has the responsibility to review and recommend appropriate disposition of interlocutory appeals in all cases pending before the regional offices, to recommend Board action with respect to reopening cases on its own motion, and to provide substantive guidance to other Board offices on motions filed in connection with the PFR process. OAC staff are also involved in the Board's outreach program to familiarize agencies, unions representing Federal employees, attorneys, and other interested parties with both substantive personnel law and the Board's practices and procedures.

The Administrative Law Judge (ALJ) has the statutory and/or regulatory responsibility to hear cases involving: 1) Special Counsel complaints alleging violations of the Hatch Political Activity Act (Hatch Act); 2) Special Counsel complaints involving prohibited personnel practices or violations of civil service laws, rules, or regulations; 3) specified agency actions involving administrative law judges; and 4) performance-based removals from the Senior Executive Service. Such cases come under the Board's original jurisdiction and do not proceed through the regional offices. The ALJ also hears appeals from the Board's own employees, and, from time to time, the Board assigns to the ALJ appellate jurisdiction cases having unique characteristics.

Because Board opinions and orders are of a precedential nature and are relied on by Federal agencies in taking and defending personnel actions and in planning actions such as major reductions in force, as well as by appellants in appealing agency actions, it is imperative that the Board's decisions be well-written and well-reasoned opinions so that they will withstand judicial review and provide clear guidance to agencies and appellants. Based on the increasing number of expected initial appeals filed with the regional offices, the Board estimates that OAC will handle 1400 PFR's in fiscal year 1991.

Cases that are not settled and are pursued through the PFR process tend to be the more complex cases and often involve developing areas of the law. In addition, settlement itself may raise a number of new issues, including questions related to attorney fee awards, the Board's enforcement authority, and the circumstance under which a settlement may be set aside. The complex issues facing the Board and the Board's decision to issue detailed opinions and orders in a greater number of cases will increase OAC's workload. Although the same research and analysis is necessary in all cases, those requiring a lengthier opinion and order necessitate greater time and effort to prepare.

The OAC workload is also driven in large part by the decisions handed down by the Federal Circuit that overturn or modify Board decisions, or that affect its jurisdiction. Particularly complex issues have been and will continue to be addressed in such areas of the law as: (1) The relationship between 5 U.S.C. Chapters 43 and 75 with respect to actions based on unacceptable performance; (2) the question of when Congress intended to authorize the award of attorney fees to prevailing appellants; (3) the scope of the Board's jurisdiction in security clearance cases; and (4) the scope of the Board's jurisdiction with respect to enforced leave actions. Additionally, in a recent decision, the Court seems to have ruled that the Board has jurisdiction over a class of cases not previously thought to be within its purview, those involving "retention, hiring, or rehiring" of veterans preference eligibles in both the excepted and competitive service. The Board will have to address the impact of this decision in future cases and may also experience an increase in appeals as a result.

OAC will continue to be required to prepare policy position papers for the Board, such as those prepared on the subjects of reasonable accommodation of employees handicapped by drug and alcohol abuse and recovery of overpayment of civil service retirement annuities by the Office of Personnel Management. Issues that are likely to affect future Federal personnel cases, such as Federal drug testing programs are also being addressed. The interpretation of new statutes and regulations, such as the Whistleblower Protection Act, the Civil Service Retirement Spouse Equity Act, the Federal Employees Retirement System Act, and OPM reduction-in-force and performance regulations will also require increased research and analysis.

The workload of the Office of the Administrative Law Judge is predicted to remain at approximately the same level of 25 to 30 cases. Although the number of original jurisdiction cases is relatively small, these cases typically involve complex legal and sensitive issues that require careful analysis. During fiscal year 1989, the ALJ dealt with a series of Hatch Act cases involving employees of State agencies, one of which was the most extensive ever filed at MSPB.

An increase of two FTEs is requested for this budget activity to support the additional workload that is expected as a result of the Whistleblower Protection Act as well as increases in normal workload as a result of such causes as reductions in force at TVA, and the Department of Defense's planned base closings. As described above, the individual right of action cases under the Whistleblower Protection Act will be filed with the regional offices, but petitions for review of these initial decisions will be assigned to the Office of Appeals Counsel.

In summary, the requested resource level for this area of the Board's operations is intended to support the continued timely processing of both appellate and original jurisdiction cases brought to the Board, to handle the anticipated increased workload, and to meet the objective of improving the quality of the Board's decisions and its adjudicatory processes.

C. LEGAL

The Office of the General Counsel (OGC) provides legal counsel and representation to the Board and its offices. As the "Board's lawyer," the office performs four principal functions: litigation, advisory services, case-related services, and management of Congressional relations and public affairs.

The Office of the General Counsel represents the Board and its interests in litigation involving its decisions, policies, and practice. The Whistleblower Protection Act substantially increases the office's litigation responsibilities. Specifically, the Whistleblower Protection Act provides that the Board will be the named respondent in judicial review of its decisions on appeals, unless the review requires the court to address the merits of the underlying personnel decision or a request for attorney fees. Thus, the Board will defend its decisions involving jurisdictional and procedural matters in the United States Court of Appeals for the Federal Circuit. When the Board had this responsibility previously in fiscal years 1985 and 1986 about 325 cases were processed each year. Therefore, in addition to the office's present litigation caseload, OGC attorneys will write the briefs and present oral arguments on behalf of the Board in these Federal Circuit cases.

The Board is the named respondent in most appeals from its decisions issued under its original jurisdiction authority. OGC represents the Board in these cases, including appeals of decisions on complaints brought by the Special Counsel, and requests to review OPM rules or regulations.

OGC will continue to represent the Board in district courts in other types of cases. In many of these cases, OGC attorneys serve as trial counsel, performing discovery, examination of witnesses, and other trial functions, as well as drafting briefs and pleadings and presenting oral arguments. OGC attorneys represent the Board in actions for extraordinary relief, such as injunction or writs of mandamus, in Federal trial and appellate courts. Moreover, when Board officials are sued for alleged violations of constitutional rights or for alleged discriminatory acts, the office coordinates the judicial defense of those officials with representatives of the Justice Department. These actions often involve responding to complicated charges. OGC attorneys assist the Department of Justice attorneys in all aspects of these cases.

OGC monitors the progress of judicial appeals from decisions issued under the Board's appellate jurisdiction authority where the merits of the underlying personnel action or a request for attorney fees are in issue in order to protect the Board's interests. These cases are filed in the Court of Appeals for the Federal Circuit or, in cases involving allegations of discrimination, in the various Federal district courts. The Board expects to monitor between 700 and 800 cases involving appeals from such decisions. Although the agency, rather than the Board, is the respondent in these monitored cases and is defended by the Department of Justice, OGC must respond to inquiries and evaluate whether intervention is appropriate. The office also prepares case summaries and analyses of relevant published court decisions for dissemination to the Board's headquarters and regional offices.

When the Board elects to participate in a judicial appeal, OGC attorneys represent the Board. For example, the Board is regularly a party in cases where the Office of Personnel

Management has sought to exercise its authority under 5 U.S.C. § 7703(d) to challenge Board decisions. In these cases, a two-tiered response is required. The office must brief the threshold matter of whether the court should consider OPM's request for review. Should the petition be granted, OGC attorneys then fully brief the issues being challenged by OPM.

In addition to its litigation function, OGC provides legal advice to the Board, and to offices of the Board, on all matters that arise in connection with the operation of MSPB as a Government agency. For example, the office advises the Board on labor relations, personnel disputes, and discrimination complaints. It provides advice on Freedom of Information Act (FOIA) and Privacy Act matters, and on regulatory, contract, appropriated funds, and ethics issues. It is expected that the Whistleblower Protection Act, the basic purposes of which are to improve protection for Federal employees who disclose wrongdoing, to prevent reprisals, and to help eliminate wrongdoing within the Government, will raise many questions of first impression. This will result in a significant increase in the office's advisory function.

With respect to its case-related services, the OGC gives advice and prepares decisions for the Board in a variety of cases within the Board's jurisdiction. These include stay requests, corrective actions, disciplinary actions, and Hatch Act actions filed by the Special Counsel. They also include cases involving compliance with Board orders and other, often complicated, appellate jurisdiction cases that have been assigned by the Board to OGC. The office also performs case-related services with regard to requests for reconsideration filed by the Director of OPM and with regard to requests for review of OPM regulations.

Approximately three-fourths of the time the office spends in case-related services is devoted to drafting proposed decisions for the Board in compliance cases. These opinions further develop the body of law concerning the extent of an agency's duty to comply with a Board order.

The office manages legislative policy, Congressional relations, and public affairs for the Board. This function includes analyzing proposed legislation, drafting statements to be submitted to Congressional committees, and responding to Congressional, media, and public inquiries.

In 1989, the Board litigated a variety of cases in court, the most significant of which was *State of Minnesota, Department of Jobs and Training v. MSPB*. In this Hatch Act case, the United States Court of Appeals for the Eighth Circuit issued an *en banc* decision affirming the Board's decision. OGC attorneys briefed and argued the case for the Board at all levels of litigation.

The additional three FTE's requested for the legal budget activity are needed to handle the increased litigation workload resulting from the passage of the Whistleblower Protection Act. As explained above, the Board is responsible for litigating approximately 200 to 300 additional jurisdictional and procedural appeals. This work includes writing briefs and presenting oral arguments on behalf of the Board in the Federal Circuit Court of Appeals. The additional FTE's would be devoted to this new workload.

In summary, the requested resource level for this budget activity is intended to support necessary legal counsel and case-related services to the Board, the continued effective representation of the Board in litigation in light of its increased litigation caseload, performance of legislative functions, and the performance of the various special assignments made by the Board, especially those related to the implementation of the Whistleblower Protection Act.

D. CASE DECISION AND PROGRAM MANAGEMENT

The remaining MSPB offices provide administrative and management support to the Board, conduct special studies of the civil service and other merit systems, and provide an annual oversight review of the significant actions of OPM. They also conduct the overall administration of the Board's affairs. The functions of these offices and planned activities for fiscal year 1991 are:

Office of the Board - This includes the administrative office of the Chairman, Vice-Chairman, and Member of the Board.

Office of the Executive Director - This is the administrative office of the Executive Director which has been delegated authority by the Chairman for the day-to-day management of MSPB.

Office of Management Analysis - This office provides support in the development, coordination, and evaluation of a wide array of Board internal management policies, systems, and programs, including oversight responsibilities for the annual internal control review process and audit followup. This office is also responsible for conducting regular cyclical reviews of headquarters and regional program and administrative management, preparing the Board's Annual

Report to the President and Congress on the significant actions taken by the Board, and the Board's annual study of cases decided.

Office of Policy and Evaluation - This office is responsible for conducting special studies of the civil service and other merit systems and the annual review of the significant actions of the Office of Personnel Management, as required by statute. The findings and recommendations from these studies are contained in periodic reports addressed to the President and the Congress. These reports are also reviewed by a large secondary audience of Federal agency heads and other officials, public interest groups, academicians, employee associations, and other interested groups and individuals.

Studies have been conducted in the past year on a wide variety of important public personnel policies and programs. They include a 10-year retrospective review and report on the U.S. Office of Personnel Management; an analysis of the adequacy of supervisory selection systems in the 22 largest Federal departments and agencies; a comparative review of a merit system not covered by the personnel rules and regulations of title 5 U.S.C. (Tennessee Valley Authority--a Government corporation); and an analysis of Federal employee turnover for long term staffing implications.

The Board also conducted a survey of former Senior Executive Service members to determine why they left Government service and whether actions can be taken to reduce the rate of future departures; an analysis of the success of efforts to "simplify" or reduce overly prescriptive personnel rules and regulations; a survey of over 3,500 Federal personnel officials to obtain their views on and experiences with a variety of personnel programs, initiatives, and prohibited personnel practices; and a review of the system for developing Federal classification and qualification standards. The office also initiated and co-sponsored with the Office of Personnel Management a conference on work force quality assessment and published a report on the conference.

Studies to be initiated or completed by the research staff in fiscal year 1991 include an analysis of the significant actions of the Office of Personnel Management (a statutory requirement for MSPB); an examination of the personnel system operated under title 38 U.S.C. in the Department of Veterans Affairs (as an example of an alternative employment system) to determine if it is consistent with the statutory merit principles; a review of the rank-in-person structure of the Senior Executive Service; a followup study of the reasons why employees leave the Government; and a governmentwide survey of 23,000 Federal employees on selected Federal personnel management issues.

The Board plans to co-sponsor an advisory committee with OPM that will bring top talent together to assess the quality of the Federal work force. Other studies will be based on the needs and priorities which arise prior to and during fiscal year 1991. Some possibilities include a comparative study of the civil service systems in the U.S. and a foreign government and an on-site evaluation of the recruitment and hiring practices in selected Federal agencies.

Additional benefits are being realized from the Board's work as the readership and impact of its studies expand. For example, the survey questionnaire designed for the Board's turnover study is being used by some cabinet agencies for further turnover analysis. There is a great deal of media interest in this report, and considerable weight is being given to the findings in the current debates on issues such as Federal pay.

Furthermore, a number of remedial actions have been initiated by Federal agencies in response to problems identified in Board studies. These reports are being quoted among constituent communities at an increasing rate. The National Commission on the Public Service (Volcker Commission), for example, has relied on findings from Board studies in its final report, as well as in its task force reports. The General Accounting Office has cited the Board as an authoritative source in several of its reports. In like manner, witnesses testifying on job recruitment and career and non-career executives in the Federal service in recent congressional hearings have cited findings in Board reports.

As a result of several recent Board studies, a number of Federal departments and agencies have requested and received additional data. In many cases, if the Board had not already developed the information, the agencies would have had to develop it for themselves, with a cumulative cost far in excess of the amount required by the Board on a centralized basis. The turnover study released last year, for example, generated considerable interest long before its actual publication. In sum, there is increasing evidence that the Board's studies are having a salutary impact on Federal personnel policies and practices, leading to a more efficient and effective civil service work force.

Office of the Inspector General - This is an independent, nonstatutory entity within the Board. The OIG conducts audits, investigations, and internal control evaluations of Board programs and operations in order to promote economy and efficiency, to prevent and detect fraud, waste, and mismanagement, and to keep the Chairman informed of any problems and deficiencies identified.

The work of the OIG is complicated because it must oversee activities in 11 widely separated regional offices throughout the United States as well as in headquarters. This oversight activity includes the Board's system of internal controls and compliance reviews mandated by such agencies as OMB. In addition, during this fiscal year, OIG conducted a Physical Security Survey of all regional offices and headquarters, a Personnel Suitability Review, and a review to determine compliance with the Computer Security Act.

Office of the Clerk - This office performs administrative and ministerial functions to facilitate the adjudication of cases and serves as a liaison with the public, the courts, other Government agencies, and commercial publishing companies. It also administers the Board's records, correspondence, and reports management programs. The Clerk manages the Board's library and mail room, and serves as FOIA, Privacy Act, and Government in the Sunshine Act officer.

The Clerk's office recently implemented the automation of its records retirement process. As decisions are issued by the Board, the records are filed in an electronic filing system and entered into the data base. After storage for six months, the cases are retired to the Federal Records Center. The adoption of the electronic system has eliminated paperwork and extensive searches through manual inventory sheets for case file locations at the Federal Records Center when a file must be recalled.

In fiscal year 1991, the Clerk's office will process about 1400 PFR's, rule on about 190 procedural motions and reviews, check the cites, and issue the final orders in all the cases decided by the Board. It will also provide about 800 certified indexes and records to Federal courts and to the EEOC.

In its public liaison function, during fiscal year 1991, the Clerk's office anticipates responding to more than 4,300 telephonic, written, and personal inquiries, assisting 900 visitors to the Board's law library, and coordinating the publication of final opinions and orders with commercial publishers. The office estimates that it will respond to nearly 500 FOIA and Privacy Act requests and will arrange

Board meetings in compliance with the Government in the Sunshine Act. It also expects to receive about 200 questions regarding the Whistleblower Protection Act.

Office of Administration - This office coordinates the administrative functions of the agency which consist of financial management, procurement, contracting, general office services, personnel, equal employment, and information resources management. The office consists of the four divisions described below: Financial and Administrative Management, Personnel, Equal Employment, and Information Resources Management.

The Financial and Administrative Management Division administers the budget, accounting, procurement, physical security, and property management functions for the Board. The office works with the U.S. Department of Agriculture's National Finance Center through a cross-servicing arrangement to ensure that the Board's financial management function is carried out as efficiently as possible.

The Personnel Division provides advice and services to managers and employees of Board offices in the areas of position classification, recruiting and staffing, employee-management relations, employee development and training, personnel security, and payroll. The office also develops policies and procedures in the personnel management area.

The Equal Employment Division is responsible for managing the Board's equal employment programs, including developing annual affirmative action plans, administering special emphasis programs, performing community outreach and targeted recruitment, and processing complaints of discrimination. The office also provides advisory services to Board managers and supervisors on all aspects of equal employment.

The Information Resources Management Division is responsible for managing and directing the MSPB information resources program. This includes development of MSPB-wide IRM policy; systems development of all automated systems; IRM liaison with other Federal agencies; operation of the MSPB headquarters' minicomputers and local area networks; data communications management; review and approval of all IRM procurements; IRM strategic planning; and development of the IRM budget.

MSPB has continued to expand and enhance its automated systems and electronic mail network. Some of the major improvements implemented in fiscal year 1989 include: (1) completing a system design for the enhancement of the

Board's major automated application, the Case Tracking System; (2) publishing the five-year information resources management strategic plan; (3) developing an end user computing management guide that sets forth the policy and procedures for acquisition and management of Board standardized personal computer hardware and software; (4) enhancing the Board's Assignment and Correspondence Tracking System by adding workload measurement reporting and increasing the flexibility in making assignments and in searching for existing ones; (5) enhancing the Reports Management Tracking System used to track and control completion of reports for external use, by automating the generation of report due reminders; (6) establishing a microcomputer support group to improve user computer literacy and provide more responsive technical support to users; and (7) conducting a study to recommend data communications networking options to support the future communications needs, both in each office and between offices.

In addition to Case Tracking System enhancements, the Board is also beginning to upgrade the telecommunications network that links all of the regional offices with headquarters to allow for faster and more efficient transmission of information.

In summary, the requested resource levels for this budget activity are intended to support the statutory requirement to conduct studies of the civil service and review the significant actions of OPM, the normal administrative functions of the agency, and the programs designed to enhance management processes and procedures.

U.S. MERIT SYSTEMS PROTECTION BOARD

APPEAL RIGHTS AND PROCEDURES

A. APPELLATE JURISDICTION

WHO: Most Federal employees, retirees, and applicants who wish to appeal a personnel action taken for such reasons as those described below, or other matters made appealable to the Board by law, rule, or regulation.

WHAT: A number of personnel actions including adverse actions, performance actions taken under Chapter 43, suitability or retirement determinations, reductions in force, denials of within-grade increases, denial of restoration or reemployment rights, and/or actions taken or not taken or so threatened based on the person's protected "whistleblowing" activity.

HOW: Appeals must be filed in writing, either by the affected Federal employee, retiree, or applicant, or by a designated representative. No official form is required, although the Board Optional Form 283 is available.

WHEN: Appeals must be filed within 20 days of the effective date of the personnel action or, within 25 days of the date of an agency's decision which does not set an effective date, within 60 days after notification that the Special Counsel has terminated the investigation of a whistleblower's complaint, or after 120 days have passed since the filing of a whistleblower's complaint where the Special Counsel has not notified the complainant that the office will seek corrective action.

WHERE: Appeals must be filed with the Board regional office which has jurisdiction in the area where the appellant's duty station was located when the personnel action was taken, or in the case of an applicant or retiree, with the regional office having jurisdiction in the area in which the appellant resides.

Steps in Processing Initial Appeals and Petitions for Review

An employee, applicant, or retiree must file a written appeal with the appropriate regional office within the appropriate time period. The regional office acknowledges

receipt of the appeal, raises any questions of timeliness or jurisdiction, and assigns the appeal to an administrative judge for consideration. The agency is asked to provide a copy of its evidentiary file to the administrative judge and a copy to the appellant. In most cases, a prehearing conference is held with the administrative judge who explains settlement procedures to the parties. The parties are given an opportunity to file additional information and a hearing is held if one has been requested by the appellant. In the usual case, the administrative judge issues the initial decision within 120 days. In accordance with the Whistleblower Protection Act, the Board regulations allow a longer discovery period in whistleblower cases. The timeframes applicable to other appeals, thus, do not all apply to these cases.

Petitions for review of initial decisions must meet certain criteria specified in the Board's regulations and may be filed by either party with the Office of the Clerk in Washington, D.C., within 35 days of the date of the initial decision. If no petition for review is filed, the initial decision becomes the final decision. If a petition for review is filed and the case is reviewed by the Board, the decision of the Board will be the final decision. If review is denied, the initial decision remains the Board's final decision. Once a decision becomes final, there is no further administrative review available. Any further petition for review must be filed with the U.S. Court of Appeals for the Federal Circuit or, in cases involving allegations of certain types of discrimination, with the appropriate Federal district court or the Equal Employment Opportunity Commission.

The Office of Personnel Management (OPM) may intervene in cases, may file a petition for reconsideration or may seek judicial review of cases affecting personnel management where it can be shown that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

B. ORIGINAL JURISDICTION

WHO: The Special Counsel and Others (Administrative law judges, members of the SES, etc.) - depending on the type of case.

WHAT: Hatch Act cases; Special Counsel requests for stays of personnel actions resulting from prohibited personnel actions; corrective action cases or disciplinary action cases brought by the Special Counsel against agencies or Federal employees who have committed prohibited personnel practices or violated a civil service law, rule, or regulation; actions brought by agencies against administrative law judges; performance-based removal from the Senior Executive Service (SES); SES appeals from denial of recertification; requests to review OPM regulations or implementation of OPM regulations by an agency.

HOW: Actions (complaints) are filed in writing.

WHEN: There is no established time limit in which to file a complaint.

WHERE: Complaints must be filed with the Office of the Clerk in Washington, D.C.

Steps in Processing Original Jurisdiction Appeals

Special Counsel cases (except stay requests), actions against administrative law judges, and SES cases are assigned to the Administrative Law Judge (ALJ). Employees against whom disciplinary action complaints are filed have 30 days in which to file a response and are entitled to a hearing. The ALJ issues a recommended decision to the Board for action (except in SES performance-based removal cases where the ALJ holds an informal hearing only). Requests for Special Counsel stay requests and requests for OPM regulation review are assigned to OGC, and the office prepares a draft decision for the Board. The Board's decision in an original jurisdiction case is the final decision. Petitions for judicial review of Board decisions may be filed with the appropriate Federal court. There are no established time limits for issuance of final decisions by the Board in other original jurisdiction cases.

U.S. MERIT SYSTEMS PROTECTION BOARD

RELATIONSHIP WITH OTHER FEDERAL AGENCIES

The Merit Systems Protection Board (the Board) is an independent quasi-judicial agency designed to protect the integrity of Federal merit systems against partisan political and other prohibited personnel practices, and to ensure adequate protection for employees against abuses by agency management. The Board's duties include: adjudicating employee appeals of personnel actions, such as removals, suspensions, and demotions, actions brought by the Office of the Special Counsel, and whistleblower actions under the Whistleblower Protection Act; conducting special studies of the merit systems, reporting on the significant actions of OPM, and reviewing OPM regulations.

The Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency incorporating functions designed to protect the merit system, protect whistleblowers, and enforce the Hatch Act. The OSC prosecutes disciplinary and corrective actions before the Board. OSC may intervene as a matter of right in certain Board proceedings. Upon application by the OSC, the Board may seek court enforcement of a subpoena issued by OSC.

The Office of Personnel Management (OPM) serves as the central "personnel management" agency of the Federal Government, ensuring that personnel services are provided to applicants and employees, and that personnel management responsibilities are performed effectively and in accordance with law and regulation. As noted, by statute, the Board is required to review OPM rules and regulations and submit an annual report on OPM significant actions. OPM may intervene as a matter of right in Board proceedings, it may file petition for reconsideration of a Board final order in certain circumstances, and in some cases it may obtain court review of a final order of the Board.

The Federal Labor Relations Authority (FLRA) oversees the Federal labor-management relations program and adjudicates disputes concerning the rights of Federal employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them.

The Equal Employment Opportunity Commission (EEOC), in addition to its private sector-related efforts promoting equal employment opportunity, is also responsible for compliance and enforcement activities relating to equal employment opportunity, including handicap and discrimination matters, in the Federal Government. In a case involving claims of discrimination, a mixed case, an appellant may elect to have EEOC review a Board decision.

The Special Panel is a three-member panel composed of a member of the Board designated by the MSPB Chairman, an EEOC commissioner designated by the EEOC Chairman, and a Special Panel Chairman appointed by the President. The Special Panel meets to decide mixed cases that cannot be resolved through the normal appellate process. To date, three cases have been decided by the Special Panel. The authorizing legislation provides that EEOC and the Board share administrative costs equally. The Board does most of the administrative work for the Panel and bills EEOC 50 percent of the resulting administrative costs.

U.S. MERIT SYSTEMS PROTECTION BOARD

SUMMARY OF THE 1991 REQUEST

Total Request: $22,564,000 and 334 FTE

The Board is requesting an increase of five FTE and $350,000 to allow the Board to process the workload generated by the Whistleblower Protection Act as well as the increased normal workload generated by causes such as the reductions in force carried out at the TVA and planned Defense Department base closings.

The Board is requesting an increase of $500,000 to allow the continued maintenance and strengthening of the Automated Data Processing network so that the productivity gains achieved will not be lost. This will allow the Board to replace obsolete equipment and take advantage of new technologies in areas such as telecommunications to continue to make improvements in efficiency.

The Board is requesting funding for four built-in adjustments that total $363,000.

1. The cost of the 25 percent increase in health insurance rates that went into effect in January 1989 ($51,000).

2. The additional cost of the Federal Employees Retirement System in 1991 ($60,000).

3. The additional compensable day in 1991 ($64,000).

4. The higher support costs due to inflation ($188,000). This is based on the OMB assumption of a 3.3 percent increase in Government support costs between 1990 and 1991.

The Board is also requesting $364,000 which is one-half the cost of the General Schedule, Executive Schedule, and Senior Executive Service pay raises scheduled for January 1991.

There is also a $50,000 increase in requested authority to charge the Civil Service Retirement and Disability Trust Fund for adjudicating retirement appeals. This adjusts the dollar level so that the Board will be reimbursed for more of its actual and projected costs in adjudicating these appeals. In fiscal year 1989 the Board spent $1,600,000, or $200,000 more the 1989 limitation, in adjudicating these cases and expects to spend about $1,700,000 in fiscal years 1990 and 1991.

The Merit Systems Protection Board is an independent quasi-judicial agency designed to protect the integrity of Federal merit systems against partisan political and other prohibited personnel practices, and to ensure adequate protection for employees against abuses by agency management. The Board's duties include: adjudicating employee appeals, actions brought by the Special Counsel, and whistleblower appeals; conducting special studies of the merit systems; reporting on the significant actions of the Office of Personnel Management (OPM); and reviewing OPM regulations.

THURSDAY, MARCH 15, 1990.

UNITED STATES TAX COURT

WITNESSES

ARTHUR L. NIMS III, CHIEF JUDGE
CHARLES S. CASAZZA, CLERK OF THE COURT
WASHINGTON B. BOWIE, FINANCIAL MANAGER
D. BRUCE SMOKE, DEPUTY FINANCIAL MANAGER

Mr. ROYBAL. The committee will now hear from the United States Tax Court.

Gentlemen, you may proceed in the manner that you desire.

OPENING STATEMENT

Chief Judge NIMS. Thank you, sir. I will try to shorten up my summary as much as I can. Then I will be most happy to answer questions, Mr. Chairman.

I am Arthur Nims, the Chief Judge of the Tax Court. In the interest of conserving time, I would like to submit a written statement and ask that it be included in the record while I orally present some of the highlights.

Mr. ROYBAL. All right. Without objection, it will be in order.

[The prepared statement of Chief Judge Arthur L. Nims III follows:]

UNITED STATES TAX COURT

BEFORE THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

Statement by Chief Judge Arthur L. Nims, III on the U.S. Tax Court's Appropriation Request and Program for Fiscal Year 1991

March 15, 1990

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you and present for your consideration the appropriation request of the United States Tax Court for fiscal year 1991.

FISCAL YEAR 1991 BUDGET REQUEST

The Tax Court's fiscal year 1991 budget request is for $31,598,000 and 350 permanent positions. This amount represents an increase of $3,478,000 (12.4%) from the fiscal year 1990 appropriation of $28,120,000. Approximately 70% of this increase is non-discretionary. The Court has no control over these increases.

This increase includes the following items for fiscal year 1991: $334,000 is required for promotions and within-grades for those employees who will be eligible for advancement to the next step in salary; $1,045,000 will be needed for the judicial and executive pay raise effective in January of 1991; and $955,000 is required for other cost adjustments to include full year funding for the fiscal year 1990 budget request, the Court's annual contribution to the Judges Survivors Annuity Fund in an amount not to exceed 11% of the annual salary of the participating judges, the higher rent payments to GSA due to increased rates, and the costs associated with inflation for contractual services, supplies and materials, and law book expenses. Other inflation costs associated with travel, transportation of things, communications, mail, printing, court reporting expenses, subscriptions, and GSA supplies will be absorbed by the Court with no impact on the Court's program.

The Court's budget request for fiscal year 1991 also includes $1,144,000 for new items. Included is an additional $100,000 in funding for new security procedures; $979,000 for ADP expenditures; and $65,000 for a telephone survey. The additional security procedures include weapons screening and the assigning of security officers to the field courtrooms when required. The ADP expenditures will include networking of personal computers within the judges chambers; connecting the judges chambers to the automated docketing system; installing a case archive storage system; purchase of additional computers and printers as required, and upgrade of existing software to include word processing. The telephone survey will identify problems with existing equipment before the installation of the Washington Intercity Telephone Service (WITS) is completed during fiscal year 1991.

The Court is not requesting any additional personnel in fiscal year 1991. The fiscal year 1991 budget request reflects the Court's best judgment as to the funds and personnel resources required to manage our case inventory and to continue the progress the Court has made in reducing the inventory.

FISCAL YEAR 1991 PLANS

For fiscal year 1991, the Court's budget request and plans include the following:

1. The Court will continue to assess the effectiveness of the physical security systems in the main courthouse in Washington and will recommend improvements if warranted.

   The Court expects to continue its arrangement with the USMS in which USMS selects a contractor to provide security personnel for the courthouse in Washington. The USMS trains the contractor's employees who are known as Court Security Officers or CSO's. The CSO's provide security for the Tax Court building 24 hours per day, seven days per week. The Tax Court funds all costs associated with this program.

   The Tax Court and USMS have been assessing the Court's security requirements for sessions held throughout the country in order to determine how best to provide weapons screening and security officers in the courtroom when needed. Because the Court travels to a large number of cities, because schedules for each city fluctuate, and because security needs change depending upon the cases involved, the Court concluded that it should utilize security personnel already located in the cities to which the Court travels. These factors, coupled with the Tax Court's statutory authority to request Deputy Marshals to attend Court sessions (26 U.S.C. 7456(c)), made the USMS the best source of assistance. USMS has agreed that its CSO's will attend Tax Court sessions when needed. The Tax Court will reimburse USMS for these contract personnel on an actual use basis.

2. To continue the program to improve operating systems, the Tax Court will have a study made to determine our equipment requirements to upgrade the telephone system of the U.S. Tax Court in Washington, D.C.

3. The Court will maintain travel and transportation costs at fiscal year 1990 levels. This action will have no effect on the number of trial sessions that the Court will hold in fiscal year 1991. Savings will occur from court sessions that conclude prior to the scheduled ending date.

4. The Court will continue the training program started in fiscal year 1986 for the Presidentially appointed judges. The Court has found that this training for the judges and other staff has been a success. Most of the training is conducted in-house at no additional cost to the Government. The total amount requested for this training is $19,000, although much less is usually expended each fiscal year.

5. Improvements of computer applications in the administrative functions such as accounting and payroll processing will continue as required. The automated docketing systems will continue to be modified and refined as required to comply with legislative changes. The Court will install a network system within the judges' chambers and also connect the chambers with the automated docketing system. Additionally, word processing and other computer capabilities will be updated as necessary.

THE COURT'S INVENTORY

Any discussion of the Court's workload must emphasize that, at the present time, the Tax Court handles approximately 95% of all substantive tax litigation, exclusive of collection actions, in the federal courts. As the Committee knows, it is the only court where taxpayers can litigate their cases without prior payment of a tax deficiency determined by the Internal Revenue Service. Proceedings in the Tax Court are begun by the filing of a petition by a taxpayer who has received a notice from the Commissioner of Internal Revenue determining a deficiency in tax. The Tax Court has no control over the deficiency notice procedure.

The Court has made significant progress in reducing its inventory during the last three fiscal years. During most of the last decade, the Court experienced annual increases in the number of cases filed and pending cases, marked by a record high inventory of 83,686 cases on September 30, 1986. During fiscal years 1987, 1988, and 1989, however, the Court's total inventory declined. A reduction in the number of cases filed and substantial closings have contributed to this trend.

During fiscal year 1989, the number of cases filed with the Court declined 4% from the prior year, from 32,701 filed in fiscal year 1988 to 31,453 cases filed in fiscal year 1989. Although the number of cases closed in fiscal year 1989 (40,100) was below the fiscal year 1988 level, the Court's overall inventory at the close of fiscal year 1989 was lower than the fiscal year 1988 year-end inventory. The Court closed fiscal year 1989 with 59,194 cases pending, a 12% reduction from September 30, 1988.

Although the Court cannot predict with certainty the number of new cases that will be filed, the Court expects the number of petitions in fiscal year 1990 to be somewhat more than the 31,453 filed in 1989. However, the Court believes that the number of closings will continue to be significant, and therefore, the fiscal year 1990 year-end inventory should be relatively consistent with the fiscal year 1989 level.

Factors affecting the inventory of the Court include the following:

1) the partnership provisions contained in the Tax Equity and Fiscal Responsibility Act of 1982 eliminated the need for investors separately to litigate their individual interests. The statute and Court's rules governing partnership actions permit multiple interests to be considered in a single action;

2) the settlement policy of the IRS chief counsel's office encourages the resolution of cases prior to commencing an action in the Court;

3) the Tax Reform Act of 1986 substantially limited the deductibility of interest on deficiencies in a non-business setting thereby contributing to the reduction in new filings;

4) the Court has made an effort to impose damages on taxpayers who assert positions that are frivolous and groundless thus discouraging the purely protestor type actions. Since fiscal year 1985, the Court has awarded the Government a total of nearly four million dollars in damages involving over 1,100 closed cases;

5) the number of closed cases has increased as a result of opinions being issued in lead cases that govern hundreds and even thousands of other related cases; and,

6) the increase in settlements -- which are in part a product of effective case management by the Court -- has contributed to reductions in the Court's inventory.

I want to emphasize that the inventory does consist mostly of recently filed cases. While the Court takes into account the wishes of the parties, it is increasingly encouraging the parties to go to trial and less frequently granting motions for continuance unless detailed reasons are given.

SMALL TAX CASE PROCEDURES

Under the small tax case procedures, which apply only if elected by the taxpayer, trials are conducted in an informal and prompt manner. The rules of evidence are relaxed; neither party is required to file a brief, and neither party may appeal. In 1984, Congress increased the jurisdictional limit for the small tax case from $5,000 to $10,000 for each taxable year.

The Court currently is authorized seventeen special trial judges who are generally assigned to handle the small tax case work. They are also assigned certain types of regular cases, but in such cases their findings and opinions are reviewed by a Presidentially appointed judge of the Court.

Generally speaking, the number of cases in which the small tax case election has been made has increased steadily since the provisions became law. However, a slight decrease was experienced in fiscal year 1988 which was consistent with the decrease in regular case filings during the year. In fiscal year 1971, 1,349 small tax cases were filed; in fiscal year 1977, 2,976 small tax cases were filed; in fiscal year 1987, 12,561 small tax cases were filed; and in fiscal year 1988, 11,075 cases were filed, a decrease of 1,486 cases from fiscal year 1987.

The small tax case procedures, as conceived by Congress, contemplated that the cases would be heard and disposed of promptly. Expeditious handling of these small tax cases helps maintain confidence in the efficiency and fairness of the revenue and judicial systems.

SUMMARY

While manageable, the Tax Court inventory is substantial and will continue to be so because of its unique jurisdiction. The Tax Court's goal is to resolve cases expeditiously while giving careful consideration to the merits of each matter. The Court is also committed to providing taxpayers with a convenient forum for trial and simplifying the presentation of disputes involving relatively small amounts of tax dollars. The Court's small-tax-case procedures, the opening of a California office, and the use of bench opinions were implemented to achieve these goals. Similarly, the Court's expedited procedures seek to provide a prompt resolution of significant issues in the field of federal taxation.

Certain of these measures, such as the small-tax-case procedures and the use of bench opinions, have proven to be effective tools for expediting the resolution of disputes before the Court. Other measures are more recent innovations whose success cannot be fully evaluated at this date. The goals, as always, will remain constant as the Court endeavors to function as a safety valve in the self-assessment system, to assure a uniform interpretation of the Internal Revenue Code, and to provide a national forum for the resolution of disputes between the taxpayers and the Internal Revenue Service.

CONCLUSION

The number of cases filed with the Court is projected to increase 59% from fiscal year 1980 to fiscal year 1991, while the number of cases closed by the Court is projected to increase 144%. The Court's fiscal year 1991 budget represents a 224% increase over the fiscal year 1980 budget without taking into account the effects of inflation. The personnel levels of the Court have only increased 63% since fiscal year 1980.

We are proud that during fiscal year 1989 we achieved our goal of having case closings exceed case filings by 8,647 cases. With adequate support, we expect to maintain our closings against our filings in fiscal years 1990 and 1991. The Court must have adequate funds and resources to manage the pending inventory and meet future challenges.

Unlike many other Government agencies with multiple programs, the Tax Court has only one program--the judicial resolution of Federal tax cases. Whenever appropriations are decreased, the primary area in which the Court is able to reduce its expenses is the amount of travel needed to hear cases. Only 3% of our cases are heard in Washington, D.C.; 97% are heard in other locations throughout the country. The Court's statute requires that sessions be held *with as little inconvenience and expense to taxpayers as is practicable.* 26 U.S. Code 7446. If the Tax Court does not travel and hold trial sessions, the inventory will begin to increase once again and the funds due Treasury will not become available.

The Court's inventory as of September 30, 1989, represented $18.259 billion in deficiencies determined by the IRS, up 1% from the $18.101 billion in deficiencies before the Court on September 30, 1988. The amount of deficiencies redetermined by the Court in all cases closed during fiscal year 1989 was $1.4 billion, which reflects a Government recovery rate of 29%. To the extent of taxes owed, the revenue ultimately involved in these cases cannot be collected until they have been heard and decided or otherwise disposed of. To the extent that the determined tax liabilities are not in fact owed, they create financial uncertainties for corporations and individuals in making business, investment, and other decisions. The Court's role is thus a critical part of the revenue and tax systems. Its action on cases results in the collection of funds for the Treasury. Just as importantly, however, it resolves taxpayer disputes with the Government in a professional, expert, objective manner.

Mr. Chairman, that concludes my statement. I will be pleased to answer any questions the Committee may have.

Chief Judge **Nims**. The Tax Court's fiscal year 1991 budget request is for $31,598,000 and 350 permanent positions. This amount represents an increase of $3,478,000, or 12.4 percent, from the fiscal year 1990 appropriation of $28,120,000.

Approximately 67 percent of this, or $2,334,000, is nondiscretionary. The Court has no control over these increases.

This increase includes the following items for fiscal year 1991: $334,000 is required for promotions and within-grade increases; $1,045,000 will be needed for the judicial and executive pay raise effective in January 1991; $955,000 is required for other cost adjustments to include full-year funding for the fiscal year 1990 budget request to include the Court's annual contribution to the Judges Survivors Annuity Fund, higher rent payments to GSA due to increased rates, and the costs associated with inflation and contractual services, supplies and materials, and law book expenses and similar items.

Other inflation costs associated with travel, transportation of things, communications, mail, printing, reporting expenses, subscriptions and GSA supplies will be absorbed by the Court with no impact on the Court's program.

The Court's budget request for fiscal year 1991 also includes the following new requests: $100,000 in funding for new security procedures to include additional security procedures such as weapons screening and the assigning of security officers to our field courtrooms where required; $979,000 for automated data processing which will provide for networking of personal computers within the Judges' chambers, connecting the Judges' chambers to the automated docketing system in the Clerk's Office, installing a case archives storage system, purchase of additional computers and printers as required, and upgrade of existing software to include word processing; and $65,000 to fund a telephone survey which will identify problems with existing equipment before the installation of the Washington Intercity Telephone Service (WITS), is completed during fiscal year 1991.

The fiscal year 1991 budget reflects the Court's best judgment as to the funds and personnel resources needed to manage our case inventory and continue making progress in reducing the inventory.

Just a word or two about our inventory, if I may. Most of the last decade, the Court experienced annual increases in the number of cases filed and pending cases marked by a record high inventory of 83,686 cases on September 30, 1986.

During fiscal year 1987, fiscal year 1988, and fiscal year 1989, however, the Court's total inventory has declined. A reduction in the number of cases filed and substantial closings have contributed to this trend.

To date, that is within the last couple of days, our inventory stands at slightly over 54,000 cases. So we are down from 83,000 plus at the end of fiscal year 1986 to 54,000 as of right now.

During fiscal year 1989, the number of cases filed with the Court declined 4 percent from the prior year, from 32,701 cases filed in fiscal year 1988 to 31,453 cases filed in fiscal year 1989. So we are still getting a large number of filings.

Although the number of cases closed in fiscal year 1989—we closed 40,100 cases in 1989—was below the number we closed in

1988, the Court's overall inventory at the close of fiscal year 1989 was lower, as I have said, than the 1988 year end inventory.

Gentlemen, unlike many other government agencies with multiple programs, the Tax Court has only one program: judicial resolution of federal tax cases. It is a single, significant mission.

Our Court is proud of the dedication and expertise of the judicial officers and employees who help fulfill this mission.

The Court's statute requires that sessions be held with as little inconvenience and expense to taxpayers as is practicable. It is thus essential that the Tax Court travel extensively to meet its statutory mandate.

Mr. Chairman, this completes my summary report, and I would, of course, be happy to answer any questions.

IRS ABUSE COMPLAINTS

Mr. Roybal. Thank you, Judge.

In the session that the House is now in, there was a break for a vote. I was asked by one of my colleagues about the United States Tax Court because he told me very clearly that he is going to challenge any funding that IRS will be getting and also the United States Tax Court, on the basis that the abusive behavior of IRS agents is not anything that people can get any relief from and that the Court turns down any complaint of any kind.

I told him at the moment that I thought the Court had no jurisdiction with regard to those kinds of complaints. Now you tell me what the facts are.

Chief Judge Nims. Well, I think that is true, Mr. Chairman. The IRS employees, such as revenue agents and collection officers, in particular, do not generally come before us. Once in a while we have one of them as a witness.

We deal with lawyers, government lawyers, who are under the Office of the Chief Counsel of IRS. Typically, we never see collection officers, and we rarely see revenue agents.

Mr. Roybal. Suppose that a complaint was made by a taxpayer against the abusive treatment that he gets from a collection officer. Where does he get any relief?

Chief Judge Nims. That relief can only be granted to him by the District Courts because they have general jurisdiction. And those are really not tax questions. We are a court of limited jurisdiction, as you of course know.

Mr. Roybal. I would like to get from you some information, some statement that could be made in the event that this member of the House decides to challenge whatever it is that the committee will recommend in your budget.

Chief Judge Nims. Well, I would like very much to submit something along those lines for inclusion in the record, if I could be able to do so.

Mr. Roybal. All right. Then I would also like to be able to use that.

Now one of the things that we are dealing with, and I know for a fact that it is going to come up when we bring up our bill, and that is of the abuses that take place in offices throughout the country involving agents of the Internal Revenue Service.

Chief Judge NIMS. Yes.

Mr. ROYBAL. We had to defend that last year and the year before that time and the year before. The same accusation is made that the individual taxpayer is deemed to be guilty and he has to go before an IRS officer to defend himself, when it should be the other way around that he should be presumed innocent. That IRS officer should be there to try to help him in whatever problem he has, not to send him to prison.

If that attitude continues, we will not be able to get across, I do not think very successfully, any recommendation that this committee will be making with regard to the Internal Revenue Service and, unfortunately, it will rub off on the United States Tax Court.

So I think we have to do something with regard to this because we are having too much of a problem. And if a vote is taken on the floor, I do not know what will happen.

Chief Judge NIMS. Well, I would certainly like to submit a statement. I would also like to add that in any case before the Court where we think the IRS is acting abusively or unfairly, we do not countenance that kind of thing. Our mission is to make sure that taxpayers are treated with the utmost fairness vis a vis the IRS.

We do that.

Mr. ROYBAL. This member of the House asked me if I would not cosponsor with him some kind of bill that would prevent that from happening; that is, unnecessary abuse of the taxpayer.

I am saying all of this because there is a great deal of seriousness on the part of at least one member of the House that could no doubt, in my opinion, result in either legislation or in a floor fight on this bill when it comes before the House.

I think that can be prevented by mutual agreement, having the agents trained to the point where they understand just exactly what their job is and not to act as prosecutors.

Chief Judge NIMS. I would have to agree with you, sir.

[The following was provided for the record:]

Ⓑ

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

CHAMBERS OF
ARTHUR L. NIMS, III
CHIEF JUDGE

March 22, 1990

The Honorable Edward R. Roybal
Chairman, Subcommittee on Treasury,
Postal Service and General Government
Committee on Appropriations
U. S. House of Representatives
H-164 Capitol Building
Washington, D. C. 20515-6028

Dear Mr. Chairman:

You inquired as to whether or not this Court would have jurisdiction over actions for damages brought by a taxpayer due to unauthorized actions by Internal Revenue Service employees. Title 26 U.S.C. section 7433 provides that suits for civil damages for unauthorized collection actions may be initiated by taxpayers in federal district court. That section also provides that such type of suit should be the exclusive remedy for recovering such damages.

The Conference Committee Report with respect to this particular section (it was part of the Taxpayer Bill of Rights, which in turn was part of the Technical and Miscellaneous Revenue Act of 1988) provides that the right to bring suit is limited to allegations of reckless or intentional disregard by an Internal Revenue Service employee of any provision of Federal law or any regulation promulgated under the Internal Revenue Code, in connection with the collection of taxes. The conference agreement goes on to state that such an action, as I indicated above, may be brought only in a federal district court and not in the Tax Court. Therefore, this Court has no authority to consider such cases. Furthermore, a taxpayer who brings this type of action on occasion may want any trial conducted before a jury and the Tax Court has no authority nor is it constituted to conduct jury trials. I do not believe it was the intention of Congress that the Tax Court should hold jury trials.

I would also note that since the Tax Court's mission is confined to the redetermination of taxes rather than collection of taxes, I.R.S. collection officers do not come before the Tax Court.

I believe this is the information you requested. Should you have any further questions, please do not hesitate to contact me

Sincerely,

(Signed) ARTHUR L. NIMS, III

Arthur L. Nims, III
Chief Judge

RENT INCREASE

Mr. **Roybal**. The other thing that I thought interesting was your increase of $3.5 million and that 67 percent of that is beyond your control that is mandated. This means that the balance then is not mandated but you justify it—and I think rather well—with only one exception.

You pointed out that there were certain increases for judicial and executive pay increases and so forth. There was an addition there for rent but you did not tell us how much more for rent you are requesting now than you were paying before.

Chief Judge **Nims**. I am going to ask Mr. Casazza to give you the exact figure on that, if he will.

Mr. **Casazza**. The rent increase is $473,000 or 13.6 percent of the total requested increase. That would include rent for our own building and for those facilities that we have throughout the country, courtrooms that we ourselves have.

Mr. **Roybal**. Now this is a building that you are paying rent for to GSA?

Chief Judge **Nims**. Right.

Mr. **Casazza**. In Washington, Mr. Chairman, we are paying rent for the building we occupy. In the 30-odd cities throughout the country, we are paying rent for a courtroom within a federal building.

CHILLER SYSTEM

Mr. **Roybal**. Do you get any reduction because the air-conditioning does not work?

Mr. **Casazza**. No.

Mr. **Roybal**. Is it working now, the air-conditioning?

Mr. **Casazza**. In our building?

Mr. **Roybal**. In any building that you pay rent for.

Mr. **Casazza**. At the present time we do have air-conditioning. I do not think we have any major problems throughout the country.

Mr. **Roybal**. But you did have a problem with regard to air-conditioning in the past in your own building?

Mr. **Casazza**. In our own building.

Mr. **Roybal**. And you did not get a reduction then?

Mr. **Casazza**. No, we did not.

Mr. **Roybal**. When the air-conditioning in a building is neglected, I think that is just neglect, nothing else. There is no excuse for a thing like that.

If they want to charge the rent they are charging, they ought to have the building in tip-top condition. I am glad to know that your air-conditioning is working because it is going to be a hot summer.

Mr. **Casazza**. GSA still has under consideration a new design system for which this committee and the Congress gave us a million-plus dollars. Supposedly, this redesign has been completed, but it has been delayed again and most recently by virtue of the fact that the National Capital Planning Commission reversed itself in its original approval of the design which, briefly stated, involved the locating of two cooling towers, I think they are called, on the plaza.

The National Capital Planning Commission believes this would affect the aesthetics of the area. It will not approve the present design. So now GSA is going back and asking the engineering firm who it had contracted with previously to see whether the cooling towers, as they are called, can be relocated perhaps on the top of our building.

And if structurally possible, then GSA has to go back to the National Capital Planning Commission as well as the Commission on Fine Arts to see if they will then approve that redesign.

Mr. Roybal. But then your air-conditioning system is not very good, is it?

Mr. Casazza. No. Technically it is working, but it is not working that well. But I cannot say it does not work. So we are probably, who knows, another year and a half away.

Mr. Roybal. But in the meantime, your employees will have to suffer the consequences?

Mr. Casazza. Oh, I frequently get calls from Judges complaining about the air-conditioning. There is not much I can do about it.

Mr. Roybal. I thought I would inquire about the status of the air-conditioning in your building because I remember discussing it with you before.

Mr. Casazza. Oh, it is a problem.

Mr. Roybal. And it has not been improved any?

Mr. Casazza. No. And unfortunately the building is designed with windows that do not open; it is totally sealed, so you do not even have the benefit of being able to open the windows.

Mr. Roybal. All right. Mr. Skeen.

Mr. Skeen. Thank you, Mr. Chairman.

Gentlemen, it seems like we never resolved the problem with the air-conditioning. It has been one that has been persistent over the last several years and you have had the money over there to do the job.

I think what we ought to do is find out who is in charge of the National Capital Building Commission and see who funds them and start fining them for every day they cannot resolve the problem of taking care of your air-conditioning.

Because as I understand it, the problem is with the cooling towers.

Mr. Casazza. Basically, yes.

Mr. Skeen. Aesthetics problems. They have the engineering problems worked out; but the aesthetics are not.

Mr. Casazza. Well, it was worked out but that is not acceptable and we have got to go back and see whether, from an engineering standpoint, they can relocate these cooling towers.

Mr. Skeen. I understand that. I was just curious as to why they did not consider the aesthetics in the original plan.

Mr. Casazza. I really do not know, Mr. Skeen.

Mr. Skeen. I think you have a bureaucratic morass over there.

Mr. Casazza. Could be.

Mr. Skeen. Somebody is exercising some, I think, capricious authority over there because this has been going on for three, four years; maybe six. I think one of the first things we talked about was the air-conditioning system and we are still fighting it.

Chief Judge **Nims**. Well, I for one would not want to get into a discussion of the aesthetics on this.

Mr. **Skeen**. I would not ask you to do that. If you said anything about the aesthetics, you may have no air-conditioning at all. [Laughter.]

Chief Judge **Nims**. That is exactly right.

CASE INVENTORY

Mr. **Skeen**. That is the way some of the things work around here.

We see that you have a 12 percent increase in your budget with a relatively consistent case load. I want to commend you, too, on the ability to work your case load down from 84,000 to around 56,000.

Chief Judge **Nims**. Fifty-four thousand.

Mr. **Skeen**. Fifty-four thousand?

Chief Judge **Nims**. Yes.

Mr. **Skeen**. But you are picking up cases as the year goes on. What is your yearly average, if there is an average? You may generate more in some years than others, but on a yearly basis about how many new cases do you pick up a year and at what point do you consider them backlogged; what time period?

Chief Judge **Nims**. We are picking up about 32,000 to 33,000 new cases a year.

Mr. **Skeen**. A year?

Chief Judge **Nims**. Yes.

Mr. **Skeen**. Then, as I understand the figures, you have worked the backlog down from 84,000 to about 54,000 and then taken care of the currently-generated case load as well.

Chief Judge **Nims**. That is right.

Mr. **Skeen**. That is a pretty good job. Am I characterizing that right?

Chief Judge **Nims**. Yes, you are, sir.

JUDICIAL AND EXECUTIVE PAY RAISE

Mr. **Skeen**. Let us talk about the judicial and executive pay raise. Has this had any effect on the morale in your system?

Chief Judge **Nims**. I guarantee you it has had tremendous effect on it. I think our judges are gratified by what Congress has done in this area.

Mr. **Skeen**. We are like the air-conditioning folks. We took a long time getting around to it, but we finally delivered.

Chief Judge **Nims**. At least it happened. The air-conditioning has not happened yet.

Mr. **Skeen**. Yes. But the morale is better and the recruitment and retention problems have abated somewhat from what they were before?

Chief Judge **Nims**. Yes. We have two vacancies now and I understand from the Executive Branch that they have some excellent candidates that they have under consideration for those vacancies, and I assure you that would not have happened——

Mr. **Skeen**. What kind of slots are the two vacancies in?

Chief Judge **Nims**. They are judicial.

Mr. SKEEN. Judicial.

Chief Judge NIMS. Yes.

Mr. SKEEN. What are the requirements?

Chief Judge NIMS. Well, the requirements?

Mr. SKEEN. Yes, qualifications.

Chief Judge NIMS. Well, essentially you really need to have been a tax lawyer for about ten years.

Mr. SKEEN. Tax lawyer.

Chief Judge NIMS. Yes.

Mr. SKEEN. What kind of a pay scale do you start out at?

Chief Judge NIMS. We are paid the same as U.S. District Court Judges.

Mr. SKEEN. What is that level?

Chief Judge NIMS. The pay is now up to $96,000.

Mr. SKEEN. Ninety-six thousand dollars, the same as Members of Congress.

Chief Judge NIMS. Exactly, sir. Then it goes up in January of 1991.

Mr. SKEEN. Yes.

Chief Judge NIMS. So that has really helped us tremendously to recruit new judges; good judges, that is.

Mr. SKEEN. Well, that sure helps. Some of the agencies we are talking to, new lawyers with a lot less experience and not in a specific area like tax law or something like that, they are offering them $30,000. I said I do not know how many attorneys you are going to get at that kind of a price. You are not going to get very many.

Chief Judge Nims. One of our problems we have to work on is our pay for our judicial law clerks. We are still having trouble recruiting them because their pay scale is pretty low and we are consistent with the law clerks for the other parts of the judiciary.

Mr. SKEEN. You are consistent?

Chief Judge NIMS. One of our problems we have to work on is conference on that.

Mr. SKEEN. Any relief in sight?

Chief Judge NIMS. Well, their problem, as I understand, is they have budgetary constraints that they are just not able to raise their law clerks' salaries. We feel that we do not want to get out of step with what the District Court judges are doing. So that is our problem.

Mr. SKEEN. Are there any statutory restraints?

Chief Judge NIMS. No. Budgetary.

Mr. SKEEN. Budgetary.

Chief Judge NIMS. Yes. I think they voted to give them substantial increases but they do not have any money to pay them.

Mr. Skeen. They did not get the money to do it with.

Chief Judge NIMS. Yes.

Mr. SKEEN. You can vote all you want to, but if you do not get the money——

Chief Judge NIMS. Yes. That is right.

Mr. SKEEN. Thank you very much for your responses. Thank you, Mr. Chairman.

CASE INVENTORY

Mr. **Roybal**. Judge, to what extent, first of all, do you believe that the pending backlog can be taken care of in the coming year?

Chief Judge **Nims**. Well, I think we will continue to reduce it for a while. We still have a large inventory of so-called tax shelter cases. Most of them now are quite amenable to settlement.

In the past three months we have sent our judges out just to deal with those kinds of cases and nothing else. They are reporting back a good settlement with those cases. So I think we are going to continue to work that down.

There will come a time when we will have a level which will remain steady. As we get cases out, we get cases in. That ought to taper off maybe at around 35,000/40,000 cases. It is kind of a revolving inventory.

Mr. **Roybal**. But you are taking effective steps to reduce the backlog?

Chief Judge **Nims**. Very definitely, sir. We've got that in mind. We were charged with that responsibility last year when we were here, and we've really accomplished something, I believe.

Mr. **Roybal**. Will that have an effect on the litigation of current cases because you're devoting some attention to the backlog? Will it affect the——

Chief Judge **Nims**. You mean slow down?

Mr. **Roybal**. Yes.

Chief Judge **Nims**. I don't believe it will, Mr. Chairman. I think we're getting to trial now in less than a year's time, I believe in every city—including Los Angeles, where we have the greatest number of our cases.

Mr. **Roybal**. Which means that cases then are heard within a year?

Chief Judge **Nims**. Yes sir. Yes, indeed.

BUDGET INCREASE

Mr. **Roybal**. We don't know whether we're going to be able to provide the additional $3.5 million because of budgetary constraints. We don't know what our allocation is going to be. But the way things look now, the budget allocation is not going to be very generous.

If we're unable to meet your request and unable to provide the $3 million, what will happen? Because I can see that 67 percent of that is beyond your control.

Chief Judge **Nims**. That's absolutely right.

Mr. **Roybal**. So how will that affect the judicial and executive pay increase, if we're unable to produce the necessary funds to pay for it?

Chief Judge **Nims**. Well, I think we have to pay those, and the real effect is that the money has to come from some other part of our budget. So, for example, if there were some kind of a freeze, the effect would be we'd cut much deeper in areas that are not mandated, such as data processing—that sort of thing.

Mr. **Roybal**. 67 percent is most of your budget increase. You won't have adequate resources to operate on if it isn't granted?

Chief Judge **Nims**. Well, that's a source of very great concern.

Mr. **Roybal**. Now, we're talking about the mandated increase. The 67 percent is not for the whole increase, there is also program increases?

Chief Judge **Nims**. Yes, that's right.

Well, I am not sure I can give you a figure of how much of our budget is mandated. I have my budget officer here, but it still would be a very serious proposition if we did not get all of our requested increase. I am sure we could find a way to live with it, but it would be tough.

Mr. **Roybal**. Maybe the budget officer can tell us what that figure is. Do you have any idea what is actually mandated of the $28 million made available last year, what percentage was mandated?

Mr. **Casazza**. Assuming, Mr. Chairman, that there was a freeze which, for discussion purposes, we would define as the same as last year for lack of a better term, we've asked for approximately $3 million more. And of that $3 million, we're suggesting that about 67 percent we do need because it encompasses the judicial raises, etc.

The other $1 million—the other one-third, so to speak, is primarily in the area of automation needed to maintain what we now have or to obtain some additional type of automation. And if worst came to worst, quite frankly we could probably live without that $1 million or one-third of the requested $3 million increase. The two-thirds—the other $2 million—if there was a freeze at this year's levels, I just don't think we could absorb it. And it is my understanding that the pay rate for judicial officers and, I guess, like members of Congress—it is the law and you have to pay it. I mean, you do not really have much choice in terms of the individual involved.

And I doubt very much, as I say, if we could absorb the pay raise if there was a freeze. We referred a few moments back to an increase in rent by GSA.

Mr. **Roybal**. But we're asking a lot of these new programs and new ideas to do it but to take it out of existing funds. If we were to ask you to do the same thing, you'd be hard pressed——

Mr. **Casazza**. We would be hard-pressed. One area in which each year we turn back money—and correct me if I'm wrong in this—is the area of travel. We have to anticipate or request funds for our upcoming fiscal year of *X* dollars. We have kept it. We froze it. Last year, I think it is $1 million for travel, but quite frankly, at the end of the year, because of the fact that trial sessions, as we call them, do not last for the scheduled period of either one or two or three weeks, there is travel money left over. But, as you gentlemen know, that money is not available to be used for anything else but travel. So——

Mr. **Roybal**. It is locked in?

Mr. **Casazza**. That is right. We cannot shift—it is my understanding you cannot shift travel money authorized and appropriated by the committee to any other area. And so, again, the one area in which we do end up having money left over which we turn back to Treasury is travel.

Mr. Roybal. That can be done when we get a reprogramming request, but so far we have not received any reprogramming requests, and many times you can't anticipate it.

Chief Judge Nims. Well, that is right, you know, and we have never asked for that up to now.

Mr. Roybal. That clarifies the position.

It will not be so good if we're forced, because of circumstances, not to be able to give you the full budget request. And that is where we stand at the present time.

We will take everything under consideration, of course. And then we will do the very best we can when the time comes.

Mr. Skeen. Mr. Chairman?

Mr. Roybal. Yes, Mr. Skeen?

AUTOMATION

Mr. Skeen. Before we wind this up, may I ask a question related to the $3 million increase. The indication was that if push came to shove that you could probably do something with a million dollars that you have got in automation.

Give me some idea where you are, what condition you are in on automation now. That is a big bone of contention with me and personally, because all agencies that come before us—inevitably if you have to deal with personnel versus automation, why, you steal from automation to take care of the personnel. I understand that, and I think that is probably right.

I also find that most of these agencies that are operating are falling further and further behind in keeping up with their automation in the departments, and you cannot operate these things under the scale that you are working with today if you do not have the equipment.

What is your condition?

Mr. Casazza. Well, I believe, insofar as the court itself is concerned, that the existing automation—what we refer to in-house as the clerk's office system, which has been up and running for four years now, has substantially improved the processing of the paper that is filed. I am satisfied that whatever money was spent on that was well spent.

Chief Judge Nims. As one of the end users of that paper, I would certainly have to second that.

Mr. Skeen. That is our experience right here in these offices just in an everyday operation right here. But I—once again, if we are given a choice, I would not want to see you give up on the automation update and keeping it up to date because——

Mr. Skeen [continuing]. When this is out of line, then there is a big whole——

Mr. Casazza. Oh, no. And we would want to maintain it, and we recently installed personal computers for the use of judges and law clerks primarily for word processing. They are in place and helpful to the work of the court.

The money, quite frankly, which is being asked for—I think approximately $600,000 was intended to be used for networking.

Mr. Skeen. I see. Expanding the system to make it work.

Mr. **Casazza**. Just within the court itself—networking various people together. We could live without it, but I don't think that would really drastically affect the operation. Networking would help, and there are judges, I'm sure, who would disagree with me who want it.

Mr. **Skeen**. Well, it saves them from having to lean out the door and holler. Okay.

Chief Judge **Nims**. Well, one of the things that we really need to do as soon as we can is to network the individual judges' chambers with the clerk's office. That would be of tremendous assistance to the judges.

Mr. **Skeen**. Well, that is what the whole idea of doing is—it saves time and effort and all the rest of it, and it facilitates movement.

Thank you very much. And thank you, Mr. Chairman.

Chief Judge **Nims**. Thank you, Mr. Chairman, and it is always a pleasure to be here.

Mr. **Roybal**. Thank you very much. The meeting is adjourned.

[The following questions were submitted to be answered for the record:]

UNITED STATES TAX COURT

QUESTIONS FOR THE RECORD FROM CONGRESSMAN AKAKA

CASELOAD AND BACKLOG

Mr. AKAKA. From your statement (page 3) I see that the number of cases filed with the Court declined 4 percent in FY89. This is the third consecutive fiscal year in which the number of cases filed has declined. For FY90, you anticipate an increase in petitions filed. Why do you anticipate an increase in caseload in FY90?

Chief Judge NIMS. As of this date, the Court has not received any cases involving substantive issues that may arise as a result of the "Tax Reform Act of 1986". Since most of its provisions affected the tax year 1987, returns for which were filed in 1988, it is possible that in the upcoming fiscal year the Court may see cases filed as a result of controversies involving the aforementioned Reform Act which possibly could cause an increase in filings.

TAX REFORM ACT OF 1986

Mr. AKAKA. In your testimony last year you indicated that you had not yet received cases under the Tax Reform Act of 1986. However, based on experience, you anticipated cases generated by complicated provisions of the Act. Have any cases under the 1986 Act worked their way through the system to the Court?

Chief Judge NIMS. We have had some cases involving certain penalty provisions contained in the 1986 Act.

Mr. AKAKA. What type of filings have your received?

Chief Judge NIMS. The cases filed thus far involve disputes regarding interest on substantial underpayments attributable to tax motivated transactions and the awarding of administrative and litigation costs.

FRIVOLOUS FILINGS

Mr. AKAKA. On page 4 you state: "the Court has made an effort to impose damages on taxpayers who assert positions that are frivolous and groundless" to discourage tax protestors. What kind of protest filings are received by the Court?

Chief Judge NIMS. The number of so-called tax protestor filings continues to decrease. The type of case filed often raises the constitutionality of the income tax laws.

Mr. AKAKA. How does the Court determine a damage award for the Government?

Chief Judge NIMS. In general, the awards of damages (now called penalties under Internal Revenue Code, section 6673) are based on three types of abusive tactics by taxpayers: (1) cases which are begun or maintained primarily for delay; (2) cases where the taxpayers positions are frivolous or groundless; for example, tax protestor cases; and (3) cases where taxpayers erroneously fail to pursue available remedies at the administrative level before coming to Court. The amount of these awards are commensurate with the degree of aggravated abusive conduct involved.

Mr. AKAKA. What is the average amount of award?

Chief Judge NIMS. During the last five fiscal years, damages have been awarded in 1,137 cases totalling $3,896,770.

D

UNITED STATES TAX COURT

FISCAL YEAR 1991

BUDGET ESTIMATES

Arthur L. Nims III, Chief Judge

UNITED STATES TAX COURT

FISCAL YEAR 1991 BUDGET ESTIMATES

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS 1

INTRODUCTION 3

SALARIES AND EXPENSES

- Appropriation Language 5
- Narrative Statement on Program and Performance 7
- Inventory of the U.S. Tax Court 9
- Comparison of Cases Filed With Cases Closed 10
- Workload Data for Fiscal Years 1988 through 1991 11
- Fiscal Year 1989 Accomplishments 12
- Fiscal Year 1990 Program 13
- Fiscal year 1991 Budget Request 14
- Summary of Fiscal Year 1991 Budget Request 15
- Program and Financing Schedule 19
- Object Classification 21
- Detail of Permanent Positions 23

TAX COURT INDEPENDENT COUNSEL

- Introduction 25
- Program and Financing Schedule 27

TAX COURT JUDGES SURVIVORS ANNUITY FUND

- Introduction 29
- Program and Financing Schedule 31

UNITED STATES TAX COURT

INTRODUCTION

The United States Tax Court is a Court of record established under Article I of the Constitution of the United States. The Court is composed of a Chief Judge and eighteen judges. Judges of the Tax Court are appointed by the President, by and with the advice and consent of the Senate for 15 year terms. Decisions by the Court are reviewable by the United States Courts of Appeals and, if certiorari is granted, by the Supreme Court.

In their judicial duties, the judges are assisted by Senior Judges, who participate in the adjudication of regular cases, and by Special Trial Judges, who hear small tax cases and certain regular cases assigned to them by the Chief Judge. During fiscal year 1991, eight Senior Judges and up to seventeen Special Trial Judges will be serving on the Court.

The Court conducts trial sessions throughout the United States, including Hawaii and Alaska.

UNITED STATES TAX COURT

APPROPRIATION LANGUAGE

SALARIES AND EXPENSES

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109; [$28,120,000] *$31,598,000*: *Provided*, That travel expenses of the judges shall be paid upon the written certificate of the judge.

(Independent Agencies Appropriations Act, 1990)

UNITED STATES TAX COURT

NARRATIVE STATEMENT ON PROGRAM AND PERFORMANCE

The U.S. Tax Court hears and decides cases involving deficiencies in Federal income, estate and gift taxes, and excise taxes relating to public charities, private foundations, qualified pension plans, and real estate investment trusts. It also renders declaratory judgments regarding the qualification or continuing qualification (including revocation of rulings on the exemptions) of retirement plans.

The Tax Court has jurisdiction to render declaratory judgments with respect to exempt organization status determinations pursuant to section 501(c)(3), Internal Revenue Code (Title 26, U.S. Code), and to enter declaratory judgments on the tax treatment of interest on proposed issues of governmental obligations. In addition, the Court has jurisdiction over actions to restrain disclosure and to obtain additional disclosure with respect to public inspection of written determinations issued by the Internal Revenue Service, and actions to compel the disclosure of the identity of third-party contacts relating to written determinations made by the Internal Revenue Service.

The Tax Court has jurisdiction to restrain the premature assessment and collection of any tax that is the subject of a petition before the Court, to review post-petition jeopardy levies and jeopardy assessments, to review certain Internal Revenue Service determinations to sell property seized pursuant to a jeopardy assessment, to enforce its overpayment determinations, to redetermine interest on deficiencies, to modify decisions in certain estate tax cases, and to award administrative and litigation costs.

For 1991, the Court proposes a trial program of 400 weeks consisting of 230 weeks of regular trial sessions and 170 weeks of small tax case sessions. Trials are held in approximately 80 cities throughout the United States. Approximately 95 percent of all substantive Federal civil tax litigation, exclusive of collection actions, is conducted in the U.S. Tax Court.

The following tabulation shows the actual and estimated inventory of cases before the Tax Court:

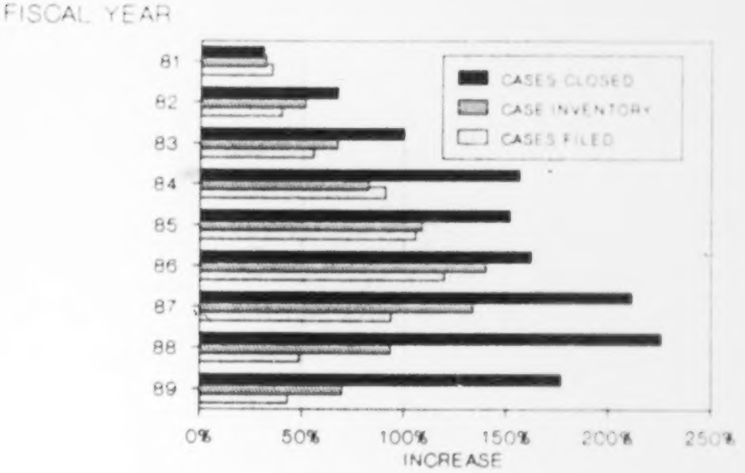
	1989 Actual	1990 Estimate	1991 Estimate
Pending, beginning year	67,491	59,194	60,000
Docketed during year	31,453	35,456	35,000
Reopened during year	350	350	350
Disposed of during year	40,100	35,000	35,350
Pending, end of year	59,194	60,000	60,000

INVENTORY OF THE U.S. TAX COURT

The Court has made significant progress in reducing its inventory during the last three fiscal years. During most of the last decade, the Court experienced annual increases in the number of cases filed and pending cases, marked by a record high inventory of 83,686 cases on September 30, 1986. During fiscal years 1987, 1988, and 1989, however, the Court's total inventory declined. A reduction in the number of cases filed and substantial closings have contributed to this trend.

During fiscal year 1989, the number of cases filed with the Court declined 4% from the prior year, from 32,701 filed in fiscal year 1988 to 31,453 cases filed in fiscal year 1989. Although the number of cases closed in fiscal year 1989 (40,100) was below the fiscal year 1988 level, the Court's overall inventory at the close of fiscal year 1989 was lower than the fiscal year 1988 year-end inventory. The Court closed fiscal year 1989 with 59,194 cases pending, a 12% reduction from September 30, 1988.

CUMULATIVE PERCENT CHANGES IN CASES FILED, CLOSED, AND PENDING FROM FY 1980



The bar graph above shows that from fiscal year 1980 through fiscal year 1989, the number of cases filed increased 43%; the number of cases closed increased 177%; and the Court's overall inventory increased 70%.

Although the Court cannot predict with certainty the number of new cases that will be filed, the Court expects the number of petitions in fiscal year 1990 to be somewhat more than the 31,453 filed in 1989. However, the Court believes that the number of closings will continue to be significant, and therefore, the fiscal year 1990 year-end inventory should be relatively consistent with the fiscal year 1989 level.

Factors affecting the inventory of the Court include the following:

1) **the partnership provisions contained in the Tax Equity and Fiscal Responsibility Act of 1982 eliminated the need for investors separately to litigate their individual interests. The statute and Court's rules governing partnership actions permit multiple interests to be considered in a single action;**

2) **the settlement policy of the IRS chief counsel's office encourages the resolution of cases prior to commencing an action in the Court;**

3) **the Tax Reform Act of 1986 substantially limited the deductibility of interest on deficiencies in a non-business setting thereby contributing to the reduction in new filings;**

4) the Court has made an effort to impose damages on taxpayers who assert positions that are frivolous and groundless thus discouraging the purely protestor type actions. Since fiscal year 1985, the Court has awarded the Government a total of nearly four million dollars in damages involving over 1,100 closed cases;

5) the number of closed cases has increased as a result of opinions being issued in lead cases that govern hundreds and even thousands of other related cases; and,

6) the increase in settlements -- which are in part a product of effective case management by the Court -- has contributed to reductions in the Court's inventory.

As the chart on below shows, the percentage of cases disposed of by settlement between the parties has increased slightly from 74% of the total closings in fiscal year 1980 to 83% of the total closings in fiscal year 1989

COMPARISON OF CASES FILED WITH CASES CLOSED

YEAR	NUMBER OF CASES FILED	NUMBER OF CASES CLOSED (opinion/settlement)	GAP BETWEEN FILINGS AND CLOSINGS
FY 1980	22,009	14,470 (10,723*/74%)	7,539
FY 1981	29,720	18,906 (13,647*/72%)	10,814
FY 1982	30,776	24,204 (18,639*/77%)	6,572
FY 1983	34,221	28,945 (22,899*/79%)	5,276
FY 1984	42,024	37,098 (29,742*/80%)	4,926
FY 1985	45,295	36,436 (29,733*/82%)	8,859
FY 1986	48,398	37,937 (30,677*/81%)	10,461
FY 1987	42,686	45,082 (37,468*/33%)	(2,396)
FY 1988	32,701	47,165 (39,837*/84%)	(14,464)
FY 1989	31,453	40,100 (33,199*/83%)	(8,647)

**Cases disposed of by settlement.*

The Court's inventory as of September 30, 1989, represented $18.259 billion in deficiencies determined by the IRS, up 1% from the $18.101 billion in deficiencies before the Court on September 30, 1988. The amount of deficiencies redetermined by the Court in all cases closed during fiscal year 1989 was $1.4 billion, which reflects a Government recovery rate of 29%.

WORKLOAD DATA FOR FISCAL YEARS 1988 THROUGH 1991

	1988 ACTUAL	1989 ACTUAL	1990 ESTIMATE	1991 ESTIMATE
FILED	32,701	31,453	35,456	35,000
Regular cases	21,626	20,657	23,456	23,000
Small tax cases	11,075	10,796	12,000	12,000
REOPENED	406	350	350	350
Regular cases	378	304	300	300
Small tax cases	28	46	50	50
CLOSED	47,165	40,100	35,000	35,350
Regular cases	33,012	26,974	23,600	23,800
Small tax cases	14,153	13,126	11,400	11,550
TRANSFERRED	---	---	---	---
Regular cases	-1,363	-1,574	-1,500	-1,500
Small tax cases	+1,363	+1,574	+1,500	+1,500
PENDING AS OF SEPT. 30	67,491	59,194	60,000	60,000
Regular cases	57,364	49,777	48,433	46,433
Small tax cases	10,127	9,417	11,567	13,567

FISCAL YEAR 1989 ACCOMPLISHMENTS

In fiscal year 1989, the Court accomplished the following:

1. Continued to refine the Court's word processing and computer capabilities: This included the development of automated statistical reports from the automated docketing system which has made processing the enormous volume of paper for which the Court is responsible more expeditious and efficient. Upgrades to the word processing equipment were accomplished along with improved capabilities for production of opinions.

2. Began working with GSA for installing a chiller system including cooling towers in the Tax Court Courthouse in Washington, D.C.: This item was approved by Congress in the Court's fiscal year 1989 budget. This project was the product of consultations between the Court and GSA as to the best method for solving the heating and cooling problems encountered in certain areas of the building. GSA conducted studies on the need for this independent chiller system. Funds have been obligated for this project in accordance with GSA requirements.

3. The Court took further steps to enhance security in the main courthouse building in Washington, D.C. The Court installed duress alarms in the chambers of all judges in the courthouse. The judges or their secretaries can activate the alarms and thereby alert the security officers in the Tax Court building that a problem exists.

   Duress alarms were also installed in the Budget and Accounting office in the courthouse and two other offices that members of the public routinely visit when they need to file papers or obtain information about cases pending before the Court.

   The Court continued to work with the U.S. Marshals Service (USMS) to evaluate the Court's security requirements for sessions outside Washington, D.C., and to develop a plan to provide weapons screening and security personnel when needed for those sessions. With FY 1989 funding, the Court finished placing walk-through metal detectors and hand-held transceiver units in all courtrooms throughout the country in which the Court has assigned space. The units are placed in service when a judge requests screening.

4. The Court instituted limited use of arbitration in valuation cases. Further study and experiments were conducted and changes in the Court's Rules of Practice and Procedures have been made.

5. The judicial conference in fiscal year 1989 was attended by the judges and special trial judges of the Court, government representatives and members of the private bar. The agenda included discussion of the comprehensive partnership rules adopted by the Court, various aspects of pretrial case management and the Court's standing pre-trial order.

FISCAL YEAR 1990 PROGRAM

During fiscal year 1990, the Court's program will be as follows:

1. The Court will continue to modify and refine the automated docketing system as required to comply with legislative changes in the Court's proceedings. Also, word processing and other computer capabilities will be updated as necessary. The judges' offices now have access to automated legal research data bases. The Court will continue development of software for the Court's library to provide up-to-date access to legal databases and management of the library collection and materials. Implementation and improvements of computer application in administrative functions including spreadsheets, communications, accounting and payroll processing will also be made.

2. The Court will upgrade the monitoring control equipment in the main courthouse in Washington, D.C. Over the last several years, the Court has installed an extensive surveillance and monitoring system; however, the older closed circuit monitors need to be replaced.

   To further enhance security for Tax Court sessions held outside Washington, duress alarms are being placed in the courtrooms and chambers of the Court's field facilities. The USMS has assisted in this project by serving as a consultant to the contractor and the Tax Court as questions have arisen. The Tax Court is fully funding the project. Installation is scheduled to be completed by the end of fiscal year 1990.

3. The Court does not know the full impact of the Technical and Miscellaneous Revenue Act that passed Congress in 1988. However, certain changes are apparent. For example, the Act will require the Court to keep files for a longer time because taxpayers will be permitted to reopen cases for a redetermination of interest on deficiencies and the Court may reopen cases involving extensions of time for estate tax payments.

4. The Court will continue to work with GSA on the design and installation of a chiller system for the Tax Court building. Feasible locations for the cooling towers make the design and installation somewhat unique and raises environmental and public space considerations requiring approval from Federal agencies and the Government of the District of Columbia.

5. The Judicial Conference held in fiscal year 1990 was attended by judges and special trial judges of the Court. Various speakers addressed the conference on evidence and ethics.

FISCAL YEAR 1991 BUDGET REQUEST

For fiscal year 1991, the Court's budget request and plans include the following:

1. The Court will continue to assess the effectiveness of the physical security systems in the main courthouse in Washington and will recommend improvements if warranted.

   The Court expects to continue its arrangement with the USMS in which USMS selects a contractor to provide security personnel for the courthouse in Washington. The USMS trains the contractor's employees who are known as Court Security Officers or CSO's. The CSO's provide security for the Tax Court building 24 hours per day, seven days per week. The Tax Court funds all costs associated with this program.

   The Tax Court and USMS have been assessing the Court's security requirements for sessions held throughout the country in order to determine how best to provide weapons screening and security officers in the courtroom when needed. Because the Court travels to a large number of cities, because schedules for each city fluctuate, and because security needs change depending upon the cases involved, the Court concluded that it should utilize security personnel already located in the cities to which the Court travels. These factors, coupled with the Tax Court's statutory authority to request Deputy Marshals to attend Court sessions (26 U.S.C. 7456(c)), made the USMS the best source of assistance. USMS has agreed that its CSO's will attend Tax Court sessions when needed. The Tax Court will reimburse USMS for these contract personnel on an actual use basis.

2. To continue the program to improve operating systems, the Tax Court will have a study made to determine our equipment requirements to upgrade the telephone system of the U.S. Tax Court in Washington, D.C.

3. The Court will maintain travel and transportation costs at fiscal year 1990 levels. This action will have no effect on the number of trial sessions that the Court will hold in fiscal year 1991. Savings will occur from court sessions that conclude prior to the scheduled ending date.

4. The Court will continue the training program started in fiscal year 1986 for the Presidentially appointed judges. The Court has found that this training for the judges and other staff has been a success. Most of the training is conducted in-house at no additional cost to the Government. The total amount requested for this training is $19,000, although much less is usually expended each fiscal year.

5. Improvements of computer applications in the administrative functions such as accounting and payroll processing will continue as required. The automated docketing systems will continue to be modified and refined as required to comply with legislative changes. The Court will install a network system within the judges' chambers and also connect the chambers with the automated docketing system. Additionally, word processing and other computer capabilities will be updated as necessary.

SUMMARY OF FISCAL YEAR 1991 BUDGET REQUEST

A summary of the fiscal year 1991 funding requirements for conducting the Court's activities follows:

	1990	1991	Difference	
Positions	350	350	0	+0.0%
Personnel Compensation and Benefits	$16,835,000	$18,523,000	+$1,688,000	+10.0%
Other Costs	$11,285,000	$13,075,000	+1,790,000	+15.9%
Budget Authority/Appropriation	$28,120,000	$31,598,000	+$3,478,000	+12.4%

The fiscal year 1991 request represents an increase of $3,478,000 over the fiscal year 1990 requirements. Changes in the 1991 program are summarized in the following:

PROGRAM CHANGES	AMOUNT
Personnel Compensation and Benefits:	
Pay Adjustments	$334,000
Other Cost Adjustments	309,000
FY 1991 Judicial and Executive Pay Raise	1,045,000
Other Objects:	
New Requirements	1,144,000
Other Cost Adjustments	646,000
Total Changes	$3,478,000

The following is a brief description of the above listed changes:

PERSONNEL COMPENSATION AND BENEFITS	*$1,688,000*

Pay adjustments (+$334,000)

> During fiscal year 1991, $188,000 will be required to finance promotions and $146,000 will be required for within-grade salary increases for employees who will be eligible for advancement to the next step in salary during the year.

Other Cost Adjustments (+$309,000)

An increase in the amount of $204,000 is required to provide for full year funding for the fiscal year 1990 budget request. This amount will allow the Court to continue staffing levels approved in prior years.

An additional $105,000 is required for the Court's annual contribution to the Judges Survivors Annuity Funds as provided for in the Tax Reform Act of 1986. Under the new provisions, the Tax Court must make an annual contribution to this fund in an amount not to exceed 11% of the annual salary of the participating judges in accordance with procedures prescribed by the Comptroller General of the United States.

FY 1991 Judicial and Executive Pay Raise (+$1,045,000)

The judicial and executive pay raise that is effective in January, 1991 for the Court's judges and special trial judges will require an additional $1,045,000 for increased salaries and benefits.

Other Objects *$1,790,000*

New Requirements (+$1,144,000)

In fiscal year 1991, $100,000 will be required to cover the increased costs for building and courtroom security. The U.S. Marshals Service will provide weapons screening for and assign security officers to the field courtrooms when required. Except on rare occasions, security personnel already located in the cities to which the Court travels will be utilized for this program.

The Court will require $979,000 for various ADP projects. These projects include networking of personal computers within the judges' chambers; connecting the judge's chambers to the automated docketing system; installing a case archive storage system; purchase of additional computers and printers as required; and upgrade to existing software to include word processing.

An additional $65,000 will be needed for a telephone survey. During fiscal year 1991, the Washington Intercity Telephone Service (WITS) will be completed. At that time, the Court may be required purchase and/or upgrade it's existing telephone equipment. This survey will identify problems with existing equipment before the installation of WITS is complete.

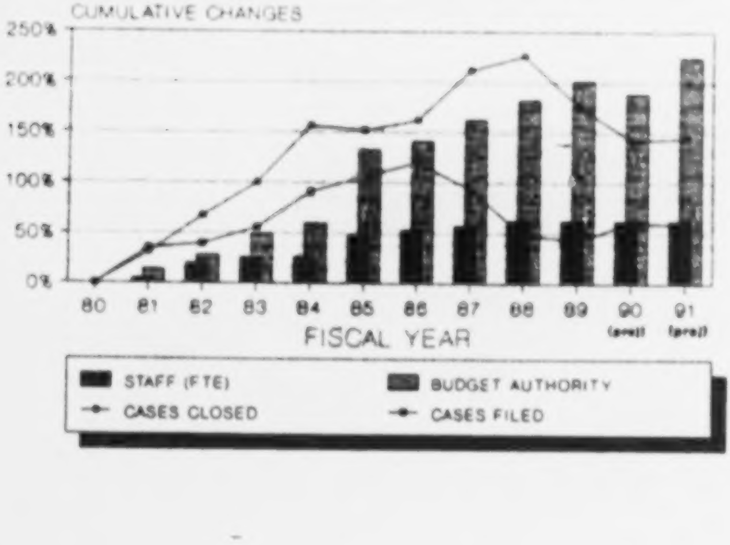
Other Cost Adjustments (+$646,000)

An increase in the amount of $646,000 is required to finance the following items which are related to continuation of the staffing levels and other activities approved in prior years:

+$473,000	**Higher rent payments to GSA due to increased rates. The Court has no control over the amount of this increase.**
+$173,000	**To cover the costs associated with inflation of contractual services, supplies and materials, and law book expenses.** Other inflation costs associated with travel, transportation of things, communications, mail, printing, court reporting expenses, subscriptions and GSA supplies will be absorbed by the Court. Absorbing the inflation in these object classes will not have any impact on the Court's program. Absorbing inflation in the other object classes is not practical. These objects classes have increased at a greater rate of inflation than the other mentioned object classes. For example, library books are increasing at the an annual inflation rate of at least ten percent (10%) per year.

The number of cases filed with the Court is projected to increase 59% from fiscal year 1980 to fiscal year 1991, while the number of cases closed by the Court is projected to increase 144%. The Court's fiscal year 1991 budget represents a 224% increase over the fiscal year 1980 budget without taking into account the effects of inflation. The personnel levels of the Court have only increased 63% since fiscal year 1980.

CASE VOLUME, STAFF, AND BUDGET TRENDS FROM FISCAL YEAR 1980



Pay costs in fiscal years 1990 and 1991, as reflected in this request, are based on the scheduled pay rates which became effective in January 1990. Details of and justifications for the fiscal year 1991 estimates are contained in the following pages.

As required by Section 131(b) of the Supplemental Appropriation Act of 1955, as amended (31 U.S.C. 200(b)), it is hereby certified that all statements of obligations reported and furnished to the Office of Management and Budget, in connection with this request of the United States Tax Court for proposed appropriation for fiscal year 1991, consist of valid obligations as defined in Section 1311 of the Act.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

19

UNITED STATES TAX COURT
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 23-0100-0-1-752		19 89 actual	19 90 estimate	19 91 estimate
Program by activities:				
10.00	Total obligations	27,751	28,120	31,598
Financing:				
25.00	Unobligated balance lapsing	1,594	...	...
40.00	**Budget authority (appropriation)**	29,345	28,120	31,598
Relation of obligations to outlays:				
71.00	Obligations incurred, net	27,751	28,120	31,598
72.40	Obligated balance, start of year	3,126	5,361	4,136
74.40	Obligated balance, end of year	-5,361	-4,136	-4,136
90.00	Outlays	25,515	29,345	31,598

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

UNITED STATES TAX COURT
SALARIES AND EXPENSES

Object Classification (in thousands of dollars)

Identification code 23-0100-0-1-752		19 89 actual	19 90 estimate	19 91 estimate
Personnel compensation:				
11.1	Full-time permanent	11,469	12,566	13,674
11.3	Other than full-time permanent	77	81	84
11.5	Other personnel compensation	188	199	205
11.9	Total personnel compensation	11,734	12,846	13,963
Personnel benefits:				
12.1	Civilian personnel benefits	2,155	2,424	2,665
13.0	Benefits for former personnel	1,477	1,565	1,895
21.0	Travel and transportation of persons	701	1,000	1,000
22.0	Transportation of things	71	121	121
23.1	Rental payments to GSA	5,474	5,857	6,330
23.2	Rental payment to others	614	754	754
24.0	Printing and reproduction	188	243	243
25.0	Other services	3,745	2,137	3,118
26.0	Supplies and materials	575	748	796
31.0	Equipment	1,017	425	713
99.9	Total obligations	27,751	28,120	31,598

Type size: 8 point 10½ picas Pd. lit. solid

STANDARD FORM 306
July 1968, Bureau of the Budget
Circular No. A-11, Revised.
306-103

UNITED STATES TAX COURT
SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS

	1989 actual	1990 estimate	1991 estimate
Judges, $89,500	27	28	28
Positions established under Section 7443A, IRC of 1986, as amended:			
Special Trial Judges, $80,550	15	17	17
GS-18	1	1	1
GS-17	2	2	2
GS-16	2	2	2
GS-15	4	7	7
GS-14	7	6	6
GS-13	23	23	37
GS-12	42	40	39
GS-11	31	30	17
GS-10	28	28	28
GS-09	59	59	63
GS-08	8	8	7
GS-07	24	24	27
GS-06	16	16	18
GS-05	19	20	36
GS-04	31	28	8
GS-03	5	5	5
GS-02	4	4	
Ungraded	2	2	2
Total permanent positions	350	350	350
Unfilled positions, end of year	-15	-5	-5
Total permanent employment, end of year	335	345	345
(Mono cast: 10.3)	(Mono cast: 4.9)	(Mono cast: 4.9)	(Mono cast: 4)

GPO : 1980 O - 351-653

UNITED STATES TAX COURT

INDEPENDENT COUNSEL

This fund was established pursuant to Public Law 99-514, the Tax Reform Act of 1986. Congress authorized the U.S. Tax Court to collect a periodic registration fee not to exceed $30.00 per year from its practitioners and to use such fees to employ independent counsel to pursue disciplinary matters involving practitioners admitted to practice before the Court. (26 U.S.C. 7475)

Type size: 8 point 23 picas
Case 100
Red underscore
Case 200

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

UNITED STATES TAX COURT INDEPENDENT COUNSEL

Program and Financing (in thousands of dollars)

Identification code 23-5023-0-2-752	19 89 actual	19 90 estimate	19 91 estimate
Program by activities:			
10.00 Total Obligations (object class 23.0)	84	50	50
Financing:			
21.40 Unobligated balance available, start of year	-353	-280	-240
24.40 Unobligated balance available, end of year	280	240	200
60.00 **Budget authority** (appropriation) (permanent, indefinite)	11	10	10
Relation of obligations to outlays:			
71.00 Obligations incurred, net	83	50	50
72.40 Obligated balance, start of year		74	80
74.40 Obligated balance, end of year	-74	-80	-80
90.00 Outlays	9	44	50
(Mono cast 21.5)	(Mono cast 5)	(Mono cast 5)	(Mono cast 4.9)

UNITED STATES TAX COURT

TAX COURT JUDGES SURVIVORS ANNUITY FUND

This fund, established under Title 26, U.S. Code, section 7448, is used to pay survivorship benefits to eligible surviving spouses and dependent children of deceased judges of the U.S. Tax Court. Participating judges pay 3.5% of their salaries or retired pay into the fund to cover creditable service for which payment is required. Additional funds, subject to a maximum ceiling of 11% of the participating judges salaries, are provided, as needed, through the annual appropriation to the U.S. Tax Court.

On September 30, 1989, 26 judges of the Court were participating in the Fund, and four eligible widows were receiving survivorship annuity payments.

THURSDAY, MARCH 15, 1990.

FEDERAL ELECTION COMMISSION

WITNESSES

LEE ANN ELLIOTT, CHAIRMAN

JOHN WARREN McGARRY, VICE CHAIRMAN AND CHAIRMAN, FINANCE COMMITTEE

JOAN D. AIKENS, COMMISSIONER

Mr. ROYBAL. The committee will come to order.

The committee is in session to hear from the Federal Election Commission. I ask you, Ms. Elliott, to proceed in any manner you desire.

INTRODUCTION OF ASSOCIATES

Ms. ELLIOTT. Thank you, Mr. Chairman.

We are very pleased to be here. Our testimony is going to be given by the chairman of our finance committee, who is vice chairman of the Commission, John McGarry.

FY 1991 BUDGET REQUEST

Mr. MCGARRY. Thank you, Madame Chairman, and good morning, Mr. Chairman, Mr. Skeen. I would like to begin by stating for the record, Mr. Chairman, that the Federal Election Commission's budget for fiscal year 1991 is in total agreement with the Office of Management and Budget.

In other words, Mr. Chairman, the dollar figure of $17,150,000 and the staffing level of 266 full-time equivalent are the numbers in the President's budget that was received by the Congress earlier this year.

We are going to submit the formal testimony, Mr. Chairman, and before answering your questions I would like to make a brief comment if I may, sir.

Mr. ROYBAL. Your formal testimony will appear in the record at this point, and I ask you to summarize.

[The information follows:]

STATEMENT
OF

JOHN WARREN McGARRY
VICE-CHAIRMAN

AND

CHAIRMAN OF THE FINANCE COMMITTEE

FEDERAL ELECTION COMMISSION

BEFORE THE

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE
AND GENERAL GOVERNMENT

COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 15, 1990

IN SUPPORT OF THE

FISCAL YEAR **1991** APPROPRIATIONS REQUEST

Mr. Chairman, as Chairman of our Finance Committee, it is my responsibility to represent the Commission before its authorization and appropriations committees in support of our fiscal year 1991 budget request. This year my task has been made easier because the Commission and OMB have reached agreement on the FY 1991 request for the Commission. We had originally submitted a request for $18,679,000 and 280.8 FTE (full time equivalents or staff years) to OMB on September 1, 1989. Because we concurrently submit our request to the Congress and the OMB, you have, of course, seen that original request. After negotiation, we agreed on a figure of $17,150,000 and 266 FTE. That is contained in the President's Budget as transmitted to Congress, and we support that request.

The request for $17,150,000 and 266 FTE represents a base level of funding which we feel is necessary to enable the FEC to properly address its work with regard to the 1990 Congressional elections, and to prepare for the 1992 Presidential elections. The Commission must receive the staff requested, and the funds to support that staff, if we are to successfully promote full public disclosure of campaign finance activity in the 1990 elections and to enforce the Federal Election Campaign Act.

Our written justification lays out the challenge the Commission faces in keeping up with the growth in overall campaign finance activity. I will touch on that challenge in a moment. However, I want to talk about something that is separate from the amount of money spent in federal elections, or the Commission's workload.

THE FEC'S MISSION AND DEMOCRATIC REFORMS IN THE WORLD TODAY

Since the late 1970's, the FEC has received many requests from election officials throughout the world for information about the American electoral system. Until the Commission was created, there was no federal agency to which other nations could look to learn about the American political model, since the conduct of elections is largely a state and local matter. While no such international role is specified for the Commission in the Act, we have willingly shared our expertise with both established and emerging democracies. As more countries adopt new laws governing political campaigns, their interest has expanded from election administration to campaign finance regulation also. Literally dozens of foreign delegations visit the FEC each year.

Last year, world events focused new attention and placed new educational demands on the Commission. The Soviet Union created its Central Election Commission and sought contact with the FEC for technical exchanges. As you know, a delegation from the FEC visited the Soviet Union in June and we received a return delegation from the Soviet Union last November. Other eastern European countries may also solicit assistance in the near future. This is exciting and important work.

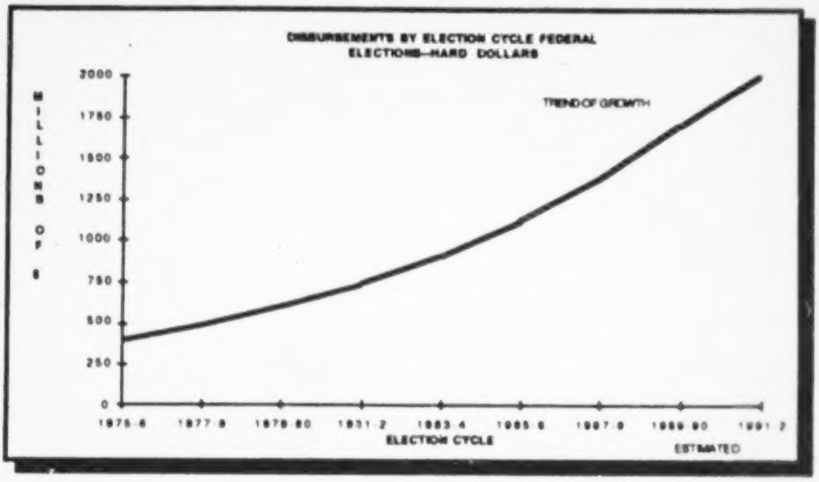
We all hope that the movement toward establishing permanent democratic institutions in eastern Europe continues. The mechanisms of electoral and campaign processes, however, are just as important to a democracy as is the underlying philosophy. Unless governmental mechanisms provide for fair campaigns and elections, the competing factions and the people themselves can grow disillusioned and the systems can collapse.

Our travel to and from the Soviet Union was covered by foundation funds and our travel within the USSR was paid by the Soviet government. Foundation funds also provided for the domestic travel of the Soviet delegation within the United States during last year's elections in Virginia and New York City. The Commissioners have used personal funds to pay for many of the expenses of the Soviets' trip to the United States, and the Commissioners are frequently called upon to purchase gifts in exchange for gifts provided by foreign governments. This becomes more difficult as more and more official delegations visit the Commission each year.

FEC WORKLOADS--FUNDS TO ACHIEVE OUR MISSION

With respect to the Commission's primary mission and the workload we face, the amount of money spent in campaigns for federal office continues to grow. The overall amount reported to and regulated by the Commission continues to increase. The total disbursements for federal candidates in 1986, the last congressional election cycle, were about $1.1 billion and we project about $1.45 billion for 1990, based on the 1988 cycle total of $1.6 billion and past history. This represents about a 32% increase.

FUNDS DISBURSED BY POLITICAL COMMITTEES BY ELECTION CYCLE FOR FEDERAL ELECTIONS--HARD MONEY REPORTABLE TO THE FEC



This uncontrolled increase in campaign finance activity means automatic increases in the Commission's workload for all programs and components. Fiscal year 1991 encompasses work on the 1988, 1990 and 1992 elections. We will be concluding the audits and enforcement actions arising from the 1988 presidential elections, the actual 1990 general elections take place in FY 1991, and we also have to begin preparing for the 1992 presidential elections. We estimate that the 1992 elections will involve between $1.75 and $2.0 billion in disbursements for federal candidates because spending in presidential elections has steadily increased each election.

INCREASES FROM 1984 TO 1988
PRESIDENTIAL ELECTION CYCLES

Total disbursements in presidential elections-- **77.3%** increase

Total disbursements in presidential primaries-- **133.4%** increase

Total contributions submitted for matching-- **68.7%** increase

Total matching funds disbursed-- **84.8%** increase

Total submissions certified by Commission-- **55.2%** increase

The above figures reveal that overall campaign finance activity is clearly increasing. Our figures for the 1990 cycle so far indicate that the growth in spending continues for the 1990 election cycle over spending in both the 1986 congressional elections and the 1988 presidential election.

MANDATORY AUDITS OF PUBLICLY FUNDED PRESIDENTIAL CAMPAIGNS

As we complete the mandatory audits of the 1988 presidential elections, the Commission is already reviewing policies and procedures to prepare for the 1992 presidential elections. This request would provide the resources necessary to both conclude the 1990 election cycle and to prepare for the 1992 presidential and congressional elections.

One area of significant concern for the Commission is the program of audits of public funds disbursed and expended by the qualified presidential candidates receiving them. In 1980, the Commission authorized a ceiling of 42 FTE for the Audit Division, with actual strength exceeding 36 FTE for most of the cycle. Due to budget cuts and legislative changes, the Commission reduced the size of its audit staff. In 1984 and 1988, the Commission implemented the public funding programs with a core staff of 24 FTE, supplemented by temporaries to assist in the certification process. We also received the generous support of a non-reimburseable detail of five GAO auditors for 18 months.

While this system worked well in 1984, it is not working as well in our audits of the 1988 presidential campaigns. The audits for the 1988 cycle will not be as timely as in 1980 or 1984, and we have had to severely curtail our audits of all other non-presidential committees.

We believe that the Audit Division needs more experienced, trained auditors in-house for the program to function successfully. Therefore, we have requested six additional FTE to build the core staff up to 28 FTE by 1991. We still plan to use temporaries in 1992, as well as assistance from the GAO, but the core staff must be larger. This will help to restore the timeliness of the presidential audits. Failure to have sufficient permanent staff on board and trained by 1992 will delay the audits of presidential candidates for that election cycle.

FEC ENFORCEMENT PROGRAMS

With regard to enforcement, the workloads also show increases from election cycle to election cycle. The following indicators reveal this increase.

ENFORCEMENT ACTIVITY FOR TWO-YEAR PERIODS
FY 1983-1984 COMPARED TO FY 1987-1988

Open (Active) Cases at end of cycle--163 to 173 (**6.1%** increase)

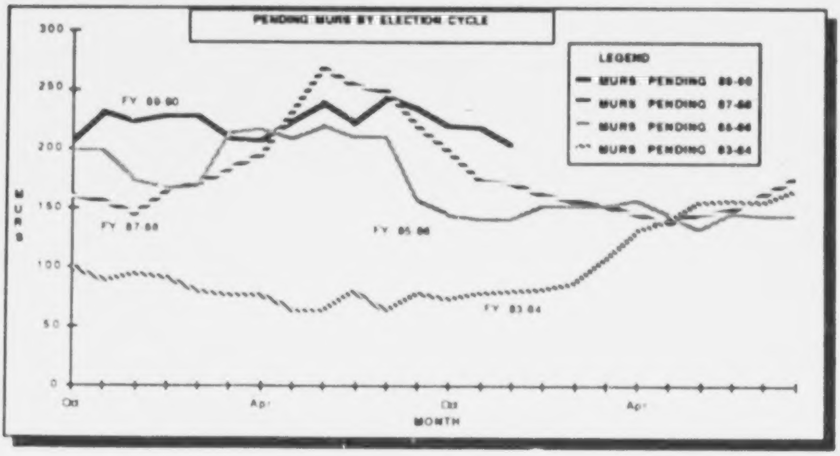
Cases closed during cycle-- 267 to 426 (**60%** increase)

Open Cases as of:

December 31, 1989--	201	(**45%** increase over 1985) (**18%** increase over 1987)
December 31, 1987--	171	
December 31, 1985--	139	

Although the highest active caseload (267 open Matters Under Review or MUR's) occured during FY 1987-1988, the Commission began the FY 1989-1990 cycle with a higher caseload than the previous three election cycles, and the caseload has remained above 200 for the entire cycle through December 1989. Our estimates indicate an even higher caseload for the 1992 cycle. In order to remain on top of this caseload, the Commission requires the funds requested, which includes four additional staff to meet the demands of this increased workload.

FEC ACTIVE ENFORCEMENT CASES (MUR's) BY TWO-YEAR PERIOD



FEC INFORMATION AND DISCLOSURE PROGRAMS-- THE COMPUTERIZED DISCLOSURE DATA BASE

In addition to providing funds for the audit and enforcement programs, this budget request seeks necessary funding to continue the Commission's very successful disclosure and information programs. The FEC's Public Records Office and the computerized disclosure data base are in high demand by the public, the media, academia, and the political community. The Commission makes a high volume of data available to the public in a timely and useable fashion.

The steady increase in money for federal campaigns means an increase in every aspect of the Commission's disclosure workload, including reports filed and itemized transactions entered into the Commission's disclosure data base.

INCREASES IN FEC WORKLOADS
1984 TO 1988 ELECTION CYCLES

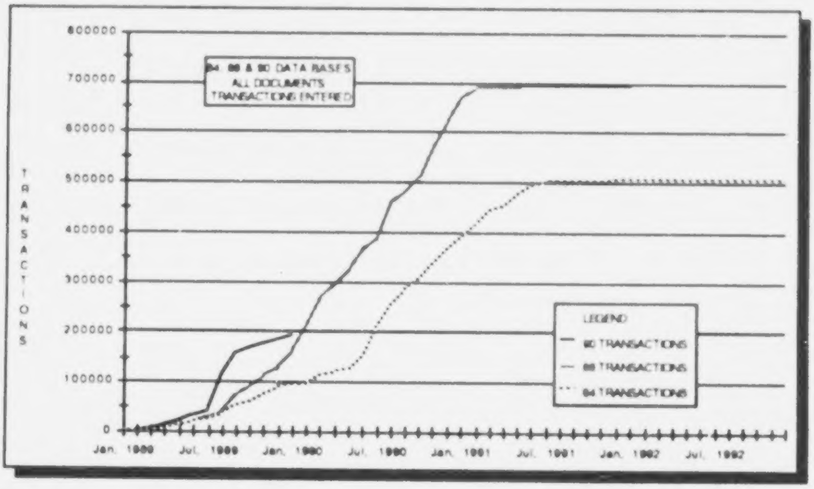
Number of reports filed--**7.3%** increase

Number of transactions entered into the data base--**36.3%** increase

Number of requests for information from the FEC--**8.9%** increase

We expect similar increases from the 1986 cycle to 1990, and we further expect the 1992 cycle to show increases over 1988.

TOTAL ITEMIZED TRANSACTIONS ENTERED INTO FEC DISCLOSURE DATA BASE BY ELECTION CYCLE--FOUR-YEAR PERIODS PER ELECTION CYCLE



(Dates are for the 1990 election cycle; comparable dates for the 1984 cycle are January 1983 to December 1986, for 1988 cycle January 1987 to December 1990.)

Our Information and Press programs are also in high demand as we assist the media and the public in accessing and understanding the Act and Commission regulations and rulings. Part of this educational effort involves a series of campaign finance workshops and seminars, the toll-free 800 phone lines, and numerous informational publications.

The Commission's Clearinghouse on Election Administration makes available the results of FEC-sponsored research to election officials on such topics as absentee ballots, voter registration, and reprecincting. The Commission has just released the final voluntary Voting Systems Standards after many years of research. The Commission's computerized disclosure data base supports not only these efforts, but also the Commission's program for State filing office access to our data base (the State Access Program), and the ability of users to tap directly into the data base (the Direct Access Program.)

This budget request includes funds necessary for the ongoing data entry of all statutorily disclosed contributions of $200 or more. The Commission began such entry for the 1990 election cycle in FY 1989. Prior to FY 1989, entry was performed only for contributions of $500 or more. We did not have the funds to perform the $200 to $500 contributions data entry until the 1990 election cycle. This budget request continues that effort, and maintains the high level of timeliness achieved for all itemized data entry by the Commission.

OFFICE AUTOMATION SUPPORT

The budget request supports the continuing operation of the Commission's office automation system, obtained with the support of this Subcommittee. As the staff becomes fully trained on the new system we expect to increase our efficiency and productivity. The request also includes funds to install a chemical fire control system, to provide better protection from heat, moisture, and power surges, all to enhance the security of the computer room which houses our main ADP equipment. The requested funds would also expand the computer room to facilitate access to the newly acquired hardware, which has increased with the expansion of the ADP resources of the Commission.

ADEQUATE FUNDING TO SUPPORT 266 STAFF

The FEC is a personnel intensive agency (70% of costs go directly for personnel salaries and benefits.) Unfortunately, the Commission has been forced to reduce staffing levels the past two fiscal years to cover non-discretionary increases in health insurance, retirement, and basic payroll costs due to unfunded pay increases and general budget restrictions. The Supplemental Appropriation approved in fiscal year 1989 recognized this chronic problem. While the Commission has attempted to maximize staffing levels, the cuts have been necessary to avoid budget overruns. To avoid staff reductions, support functions have been trimmed whenever possible to increase staffing. This request ensures proper support for the staff requested, including training, printing, travel, and equipment and supplies.

This request reflects the fact that the Commission's continued forced absorption of pay raises, health insurance costs, retirement costs, and basic overhead costs such as phones, postage, and similar items, as well as the establishment of an Inspector General's office, can not be carried forward from year to year without serious adverse impact on the Commission's programs.

PRESIDENTIAL FUND STATUS

One important program within the Commission's jurisdiction is public financing of presidential primaries and general elections, as well as the major party conventions. The Presidential Election Campaign Fund provides public financing to legally qualified presidential candidates and is funded by the one dollar income tax check-off program. Last year, we testified that the Fund would not be able to fully finance the 1996 presidential elections. Our latest projections indicate the situation has become worse-- the Fund may not be able to fully finance the 1992 elections.

The lack of adequate funds may be attribuied to a variety of factors. First, the amounts the Commission is authorized to certify for disbursement from the Fund are indexed for inflation, while the amount any one individual can check-off remains fixed at one dollar. Second, taxpayer participation in the check-off program continues to decline. In fact, 1989 statistics show that only 20% of U.S. taxpayers check-off a dollar.

Legislative change is needed to ensure the continuation of the present process, and the Commission has recommended a variety of ways to correct the imbalance between disbursements and income into the Fund. In the interim, the Commission, in cooperation with the Internal Revenue Service, plans to begin an information program to educate taxpayers about the Fund through a series of surveys, educational videos, and brochures. Accordingly, funds from our FY 1991 budget request, if fully enacted, will be spent on this educational program.

The Commission's action, however, will be no substitute for legislative change to fix the chronic problem. For your information, attached to this testimony is a table which outlines the financial history of the Fund and shows the projected shortfall for the 1992 and 1996 presidential elections.

REPRESENTATIONAL FUNDS

We seek this Subcommittee's concurrence to earmark $5,000 within our proposed appropriation for official representational expenses. Almost every visiting delegation brings with it a token gift from their country as an expression of appreciation. Every group we have visited extends similar gifts to the Commission and routinely offers their hospitality. Here, we seek only the line item authority to set aside a small sum with which we can reciprocate the hospitality of foreign and state delegations. Again, we seek no new funds, only the authority to set aside a small amount for this representational purpose.

FUND ACTIVITY ACTUAL AND ESTIMATES 1973-1997

Using inflation of 4.5% 90-97

Revised 1/30/90 RH

FISCAL YEAR	ACTUAL RECEIPTS	COLA	DISBURSEMENTS	REPAYMENTS	BALANCE ACTUAL REC
derived 1973	$2,427,000	1.0000	$0	$0	$2,427,000
derived 1974	$28,058,222	1.0000	$0	$0	$30,485,222
1975	$31,656,525	1.0910	$2,590,502	$0	$59,551,245
R derived 1976	$33,721,935	1.1540	$69,467,521	$0	$23,805,659
1977	$36,606,008	1.2290	$521,124	$1,037,029	$60,927,572
1978	$39,246,689	1.3230	$6,000	$163,725	$100,331,986
1979	$35,941,347	1.4720	$1,050,000	$23,474	$135,246,807
1980	$38,838,417	1.6710	$101,427,116	$1,094,098	$73,752,206
1981	$41,049,052	1.8440	$630,256	$202,288	$114,373,290
1982	$39,023,882	1.9570	$1,070	$58,400	$153,454,502
1983	$35,631,068	2.0200	$11,786,486	$21,899	$177,320,983
1984	$35,036,761	2.1060	$120,149,768	$505,807	$92,713,783
1985	$34,712,761	2.1810	$1,617,842	$61,840	$125,870,542
1986	$35,753,837	2.2230	$5,596	$61,641	$161,680,424
1987	$33,651,947	2.3050	$17,784,000	$357,307	$177,905,678
1988	$33,013,987	2.3990	$158,560,805	$103,500	$52,462,360
1989	$32,285,646	2.5138	$1,843,017	$22,024	$82,927,013
EST FOR 1990	$31,835,646	2.6269	$200,000	$2,101,117	$116,663,776
EST FOR 1991	$31,385,646	2.7451	$21,015,200	$0	$127,034,222
EST FOR 1992	$30,935,646	2.8686	$158,171,837	$0	**($201,969)**
EST FOR 1993	$30,485,646	2.9977	$2,198,583	$2,103,807	$30,188,901
EST FOR 1994	$30,035,646	3.1326	$55,000	$0	$60,169,547
EST FOR 1995	$29,985,646	3.2736	$25,060,800	$0	$64,694,393
EST FOR 1996	$29,135,646	3.4209	$225,387,075	$0	**($131,557,036)**
EST FOR 1997	$28,685,646	3.5748	$2,617,483	$0	**($105,488,873)**
TOTAL	$808,740,252		$922,147,081	$7,917,956	($105,488,873)

NOTES: *ACTUAL RECEIPTS TOTALS PER CALENDAR YEAR AS REPORTED BY TREASURY UNLESS OTHERWISE NOTED. EXCLUDES REPAYMENTS*

ESTIMATED RECEIPTS 1990-1997 ASSUMES A DECLINE OF $450,000 PER YEAR BASED ON AVERAGE TREND PER CALENDAR YEAR 1983-1989

COLA B1974 ANNUAL AVERAGE WITH BASE YEAR 1974 = 100
MULTIPLIER FOR CALCULATING CONVENTION AND GENERAL ELECTION PAYMENT AMOUNTS

DISBURSEMENTS GROSS PAYOUTS PER TREASURY REPORTS OR ESTIMATES

REPAYMENT REPAYMENTS RECEIVED PER TREASURY REPORTS OR ESTIMATE

CONCLUSION

I have attempted in my brief testimony to touch on the highlights of this budget request. I would note, however, that our request does not include any funding to address the Federal Election Commission's responsibilities with respect to the 1989 Ethics Act Amendments, the House approved Voter Registration legislation, or any campaign finance legislation now under discussion. Enactment of new legislation will require budget increases to fulfill any new responsibilities.

It is our belief that a strong, well-funded Federal Election Commission is a critical part of the United States' political process, which is increasingly becoming a model for new democracies. It would be a tragedy if part of the process failed due to lack of sufficient funding. While the Commission recognizes that there is much discussion and controversy over campaign financing and the need for reform, we strongly urge that reforms will not succeed if there is not an adequate foundation on which to build.

We are seeking, in this budget request, sufficient staff in enforcement, disclosure, information, and audit to enable the Commission to meet its mission. We also seek sufficient support for the staff to carry out their duties. Finally, we seek some funding to address a problem with the public funding of presidential elections. I request full funding of our request for $17,150,000 and 266 FTE staff, which is in agreement with the President's request for the FEC. I thank this Subcommittee for its past support of our efforts, and for the opportunity to appear today and present our case. My colleagues and I are ready to respond to any questions you may have.

FY 1991 BUDGET REQUEST

Mr. McGARRY. My first comment, Mr. Chairman, goes directly to the budget itself. The Federal Election Commission, as you very well know, is a personnel-intensive agency. Over 70 percent of our budget goes just to pay our staff, and I am talking in that regard about salaries, pay increases mandated by statute, health benefits, and retirement costs. We have no control over any of that.

The rest of our budget goes in large part for the support of that staff, rent, equipment, supplies, and so on. And we have very little or no control over any of that.

What we are left with is about 5 percent for discretionary items. Let me give you an example of a discretionary item. I will take printing as an example.

We are talking about providing the regulated community with the copies of the Federal Election Campaign Act, the regulations, the forms, and various other essential materials. We also supply these materials to candidates, campaign committees and other participants in the election process.

Without these materials, candidates and committees would not be able to comply with the law. We do have the discretion to cut some or all of these publications if we wanted to. But then you are going to have some people in the campaign finance community, the regulated community, without the very basic tools to understand and comply with the law.

On another point, I have a lot of figures and statistics regarding skyrocketing cost of campaign spending. I am not going to go into detail, Mr. Chairman, because I realize you have a very busy schedule both with the committee and with your own offices, but campaign spending is going right off the charts. It does not stop.

When I appeared here in 1984, Mr. Chairman, I predicted campaign spending would go over a billion dollars and that prediction came true. I will now predict that campaign spending will go over $2 billion by 1992.

The only point I want to make is that every facet and aspect of the Commission is impacted by that continuing skyrocketing growth. And we have an awful lot of other statistics and material to give you an indication, but I will not take the time for that.

I would like, in the brief moment I have with you, to make a comment in an attempt to dispel what I feel is a popular misconception about the Federal Election Commission.

We are far more, Mr. Chairman, than a repository for the receipt of campaign disclosure reports, and the processing of those reports. Day in and day out, the Federal Election Commission is confronted with some of the most important, and at the same time complex, and controversial legal issues that are facing the campaign finance community. And just to mention a few—soft money, foreign national money in U.S. elections, bank loans financing Presidential candidates, and independent expenditures. These are very important and very controversial issues that we are confronted with. And these are only a few of them. They generate heated debate both inside and outside the Federal Election Commission. Some of them wind up in very protracted litigation.

All of that, of course, has a direct and overwhelming impact on our budget. Litigation is only a small part of our overall activity. We have, at this present moment, 43 cases pending in federal courts throughout the United States.

INDEPENDENT EXPENDITURE

Let me briefly mention just one independent expenditure case that wound up in the Courts. That whole matter, Mr. Chairman, began one week before the 1980 Presidential election campaign.

One individual went out and spent substantial sums of money, many thousands of dollars, running full page ads in newspapers, including the New York Times, expressly advocating the defeat of a clearly identified Presidential candidate.

That individual had every right to spend unlimited amounts of his own money advocating the election or defeat of any clearly identified candidate. But the law requires that, at a minimum, it has to be disclosed, and he failed to disclose or report anything and a complaint was filed against him.

He resisted and fought the Commission at every turn. He had very able, sophisticated counsel and they resorted to every legal device available to them. That case went all the way through the courts at every level—District Court, Court of Appeals and ultimately to the Supreme Court of the United States.

We eventually prevailed in that case and it should close out in a couple of weeks. But I think it is fair to say, Mr. Chairman, that the Federal Election Commission is far more than a repository for the receipt and processing of campaign disclosure reports.

These critically important and highly controversial issues take their toll on our personnel and resources, and it is very clear that they have a dramatic dollar impact on our budget.

DEMOCRATIC REFORMS IN EASTERN EUROPE

I will close, Mr. Chairman, by mentioning one item that has nothing whatever to do with our budget. Over the past year, we have had extensive contact with and we have exchanged a great deal of election information with our counterpart in the Soviet Union, the Central Electoral Commission for Election of the People's Deputies.

As a matter of fact, a delegation from the Federal Election Commission will leave tomorrow to be on hand in the Soviet Union. We will visit Estonia, Tallin, the capital of Estonia, and Kazakhstan, to witness the elections that are taking place there Sunday.

These contacts, Mr. Chairman, made a lot of us stop and think how complacent we are in taking our own cherished freedoms for granted here in the United States. I think it is fair to say that it has become apparent now that the cry for freedom and the cry for free elections is exploding throughout the world in some of the most dramatic developments in history.

All of this has affirmed what most of us, all of us at the Federal Election Commission, have always felt: that we are engaged in some of the most important business of our government.

I think the integrity of our own electoral process is the rock-bed foundation of our whole system of democracy. It is the essence of our freedom. If there ever was a critically important time for the United States electoral process to be vibrant and strong, it is now, Mr. Chairman. And that is a basic tenet of our budget request this morning.

Thank you, Mr. Chairman.

Mr. **Roybal**. Thank you very much for that very enlightened statement.

Mr. **McGarry**. Yes.

Mr. **Roybal**. Ms. Elliott.

PRESIDENTIAL ELECTION CAMPAIGN FUND

Ms. **Elliott**. Mr. Chairman, we have one other item to bring before you today.

Mr. **Roybal**. All right.

Ms. **Elliott**. Again, it does not affect our budget but it does affect the Federal Election Campaign Act and how we administer it. The problem is the Presidential Election Campaign Fund. When we appeared before you last year, we indicated that the fund would not be able to fully finance the 1996 Presidential election cycle. The problem is more serious than that. We now find that there will be a shortfall in the 1992 Presidential election.

There are two main reasons for this. First is the income to the fund. The participation in the income tax check-off continues to decline. Between 1987 and 1988, 638,000 fewer persons checked off. Between 1988 and 1989, 728,000 fewer persons checked off. Also, the amount of money that can be contributed by any person desiring to participate in the program remains fixed at one dollar. This amount is not indexed for inflation.

The second reason, of course, are the outlays from the Fund. They are based on two key variables. One is the number of candidates that run and the other is the rate of inflation by which these expenditures are indexed.

In our estimates we applied a 4.5 percent annual rate of inflation and assumed only a 450,000 drop off in participation. With that we find in 1992 we will have at least a $200,000 deficit; and that is a very conservative estimate.

The outlook for the 1996 Presidential election is much worse. We anticipate the shortfall, again based on just a 450,000 person drop off and 4.5 percent inflation rate, to be $131 million.

This means that there would be no funds for the primary matching fund program. We would be able to certify just 72 percent of what the general election candidates would be entitled to. But we would, of course, totally finance the party conventions which have priority under the Federal Election Campaign Act.

Legislative action is the only solution. The Commission has no way to effect these funds. It will require the Congress to give attention to this problem in order to not show a deficit.

Thank you.

Mr. **Roybal**. All right.

Let us start then with questions with regard to this deficit that is predicted for 1992.

Ms. **Elliott**. Yes.

Mr. **Roybal**. Your suggestion is that legislation would be necessary to correct that.

Ms. **Elliott**. Yes.

Mr. **Roybal**. What specifically must that legislation contain?

Ms. **Elliott**. I am sure that there are many, many alternatives. I can give you a laundry list of some things that have been suggested.

First of all, the one dollar check-off could be either indexed for inflation or increased to a higher amount. On the expenditure side, instead of indexing all the disbursements at the full inflation rate, you might decide that it should only go up 1 percent, 2 percent, something like that.

It could be that you decide that one of the currently funded activities is not needed in the same proportion as the other activities created under the Act. For instance, you may decide that primaries should be financed at one inflation rate and the general election should be financed at another inflation rate.

Mr. **Roybal**. Isn't this something that a committee made up of both parties could work out and then prevail upon the Congress to include? Don't you think it should be done that way?

Ms. **Elliott**. I think that would be a wonderful idea. We would not be in a position to bring that together unless we were directed to because it is legislative.

Mr. **Roybal**. We are an appropriations committee and we are not a legislative committee.

Ms. **Elliott**. Yes.

Mr. **Roybal**. But someone has to prepare a plan of some kind. It would seem to me that it should be leaders of both parties that would sit down together and come up with a recommendation that could be sent to the appropriate committee for that action.

Now supposing that were done—I do not think that is going to be done this year anyway——

Ms. **Elliott**. Probably not.

Mr. **Roybal**. And if it is done next year, it is still too late, isn't it?

Ms. **Elliott**. Yes, it is. This is tax time now.

Mr. **Roybal**. Yes.

Ms. **Elliott**. So we have tried to enlist the cooperation of the Commissioner of The Internal Revenue Service, who yesterday issued a news release on the subject, reminding people that they have this opportunity. The release reminded that you are not penalized if you do check-off; you are not more subject to an audit if you check-off; your tax liability is not increased nor is your refund decreased if you check-off. So they have done that.

We are issuing a news release today, also, on the tax check-off telling people that this is occurring and we thought it would be appropriate to tell all of our committees.

We have already testified before the Senate Appropriations Subcommittee and I am alerted that we do not have definite dates for our other committee hearings as yet. It may be well past tax time before we ever meet.

Mr. **Roybal**. What I am afraid of is there will not be anything done in time to head off that deficit.

Ms. Elliott. Yes.

Mr. Roybal. In that event, you still have a deficit of $200,000.

Ms. Elliott. That is right. The Act anticipates a deficit; first we put aside for the conventions and then we put aside for the general election. And then it is prorated for the primary candidates.

Mr. Roybal. Well, I am thinking we will have to face that deficit at that time.

Ms. Elliott. Yes.

Mr. Roybal. Unfortunately.

DEMOCRATIC REFORM IN EASTERN EUROPE

I was interested in what Mr. McGarry was telling us about this proposed visit and the fact that he is sharing his expertise or the expertise of his people with a new democracy.

Ms. Elliott. Yes.

Mr. Roybal. That means, of course, that in talking about emergent democracies, are we actually talking about Russia as a democracy?

Mr. McGarry. Absolutely, Mr. Chairman, because the changes that have already taken place are quite dramatic. Changes have taken place in the last 72 hours. In addition to the strong presidency, they also approved a multi-party system, which is a dynamic development.

We were there at the invitation of the Soviet Union in June to review what they had done a couple of months prior. I can say that they are starving for information about the administration of elections, the regulation of the political campaigns generally, and the whole theory of democracy. It is all wrapped up in one ball of wax.

They came back and visited us and we had the cooperation of a lot of people. The State Department obviously is very interested. Everyone arranged for them to visit us at the Commission and we had quite an exchange with them.

It was very interesting and very beneficial for both sides. During that visit, they went to observe elections which were two of the most interesting and hard fought campaigns taking place in the United States at that time, and that was the Governor's race in Richmond, Virginia, and the Mayor's race up in New York.

They visited both communities and we put on a demonstration for them, among other things, at the Federal Election Commission. We set up a typical voting booth and explained how the election is conducted, the administration of the election at the local level, before they went out to view these elections.

So it is a fascinating exchange. It was totally a one party system always and totally dominated by article 6 of the Soviet Constitution and that puts the totality of everything in the Communist Party. That has been repealed along with all of the other developments.

Mr. Roybal. Just six months ago no one would even have predicted that such a thing would happen.

Now again based on your experience and background, do you think that the same thing can happen in this hemisphere? For example, based on what happened in Europe, and what happened in

Nicaragua, do you think that Cuba one of these days may lean more towards a democracy than it does today?

Mr. McGarry. In my own opinion?

Mr. Roybal. In your own opinion.

Mr. McGarry. In my own opinion, I think it is inevitable. I think the tidal wave is rolling and the genie is out of the bottle and it is overwhelming what is happening. I think it is irresistible and inevitable that it will happen.

Mr. Roybal. That opinion was shared by many others, particularly those that took part in a program the night before last, I think it was, where that was discussed.

There was no one there who really took the opposition. They all felt that the handwriting was on the wall and that it would not be too long before such a thing could happen.

REPRESENTATIONAL FUNDS

Mr. McGarry. On this score, Mr. Chairman, if I could inject one brief point. I would like to make a personal appeal to you, and I am talking about an item that is in the budget in the amount of $5,000. It is entitled representational funds.

In these exchanges—and they are increasing rapidly—we do not even have money for coffee or common courtesy soft drinks. It is most embarrassing.

The Commissioners have paid out of their own pocket. We do not go to anybody else, strictly the Commissioners. We passed the hat among ourselves, to defray the expenses.

The reason I am mentioning it is even though it is in the budget, the law requires explicit, specific language in the appropriation bill. And I honestly feel overwhelmingly strong about it. We all do at the Commission.

It would be used exclusively for this activity. And if it were not used, we would not use the money for anything else. We do have an Inspector General who will be monitoring these things and counting the donuts, if you will, and making sure they are going in the right direction and not out the back door or what have you.

But it is clearly a very important item.

Mr. Roybal. What I understood you said was that in the budget estimate for fiscal year 1991, there is an estimate of $17,150,000.

Mr. McGarry. Right.

Mr. Roybal. There is also, within that amount, a figure of $5,000 that is earmarked for that specific purpose?

Mr. McGarry. It would be for representational funds. It would be an isolated item. It would not be earmarked.

Mr. Roybal. It is not now, but you are requesting that that be done?

Mr. McGarry. The way we presented it, it would be exclusively for that. And if it is not used for that purpose, it could not be used.

Mr. Skeen. So it is in the budget now?

Mr. McGarry. Yes.

Mr. Skeen. Under representational. So it is a line item?

Mr. McGarry. Yes.

Mr. Roybal. It is a line item now.

Mr. McGarry. It is, yes, sir.

Mr. **Roybal**. Mr. Skeen.

Mr. **Skeen**. Thank you, Mr. Chairman.

That was a very interesting discussion about the exchange with the Soviets. Did you notice any influence as a result of the exchanges you had in this past election, for instance?

Mr. **McGarry**. Yes.

Mr. **Skeen**. I would have to say I would be very interested in getting a rundown on how they financed the Presidential campaign that Gorbachev ran yesterday. [Laughter.]

Mr. **Skeen**. I do not think we need to use them as a model, but I think it is very efficient. It may not be the most likeable or acceptable.

Mr. **McGarry**. I would like to think that we played a very important role in some of the changes that have taken place and will take place in the elections that we will be observing in the next week or two.

Mr. **Skeen**. Well, at least on the surface they have seemed to have adapted.

Mr. **McGarry**. Clearly.

Mr. **Skeen**. Very quickly.

Mr. **McGarry**. There have been changes and the changes are dramatic.

Mr. **Skeen**. They still do it in their own style.

Mr. **McGarry**. To some extent, yes.

But I notice even on campaign financing we had an exchange at the Kremlin with the first Vice President, the Number Two man in the pecking order, Mr. Lukyanov.

He said, well, we provide this limited amount of money for the campaigns, but we realized—and they were talking about an election that had taken place prior to our visit there in June. He said we know this one candidate, the cooperative he worked for provided him with a helicopter.

He said we have got to correct that because that made a terrific imbalance and it was not at all a level playing field. He said we have got to get involved in this with some limits and restrictions and prohibitions or whatever on campaigning. We have got to take a look at that.

We had a lot of discussion about the multi-party situation and it is interesting that that has come to pass. That was one of the reforms in the last four or five days, the elimination of Article 6, which puts the totality of power in the Communist Party, and the allowance for multi-party activity and the installation of a strong President and many other reforms.

I would like to think we have had more influence. But I can assure you we have had some influence. And the exchanges have been very rewarding and very warm and cordial and really very gratifying.

Mr. **Skeen**. Despite the fact that you had to chip in for the coffee.

Mr. **McGarry**. That is right, yes. [Laughter.]

Which we were only too happy to do.

Mr. **Skeen**. I am sure you were.

Mr. **McGarry**. I will say on the visits on their soil, they were most gracious and just could not be nicer in hospitality and personal warmth and cordiality and professionalism.

PRESIDENTIAL ELECTION CAMPAIGN FUND

Mr. **Skeen**. Let's get into this deficit. I noticed in one of this morning's papers there was a rundown, a summarization of what the IRS is reporting: some 25 percent of the returns are carrying check-off.

Ms. **Elliott**. Less than that for the last year that we have a full record of.

Mr. **Skeen**. So this is a downward trend?

Ms. **Elliott**. Yes. It had a high in 1980 at about 27 percent.

Mr. **Skeen**. That was your highest year?

Ms. **Elliott**. Yes. And in 1989, which was the last year that we of course have the figures, it was at 20.1 percent. And it has been a downward percentage of the number of filers.

It has also been a downward number in dollar amounts.

Mr. **Skeen**. So that is significant.

Ms. **Elliott**. Significant.

Mr. **Skeen**. You can talk about percentages, but if you are getting more returns.

Ms. **Elliott**. 600,000 to 700,000 down each time.

Mr. **Skeen**. We are not saved by the fact that we may be selling under cost and dependent on volume. [Laughter.]

Ms. **Elliott**. No, I guess not.

Mr. **Skeen**. So you are not getting the volume either.

Ms. **Elliott**. We are not getting the volume either.

Mr. **Skeen**. And we have a $200,000 deficit.

Ms. **Elliott**. Yes.

Mr. **Skeen**. I was interested in the prioritization because that was the first time in all the hearings that we have had that it was made clear to me, anyway, that you have a ceiling provision in the law, so that you have a priority schedule.

Ms. **Elliott**. Yes.

Mr. **Skeen**. And I am surprised that it is the conventions first. I would have thought that they would have reversed some of the processes. Because it seems to me like the promotions that they do on party conventions is pretty easy to get, whoever the host or whichever host city or host group that you are dealing with, to come up with a lot of financing.

I am not quarreling about it, but I was just interested in the rationale. Also, I can understand the last priority is the primaries because you would invite more primary participation to get in, get the money, and get out.

I think that you have given us a good rundown on what the status of the check-off system is. Would a better educational system work?

Ms. **Elliott**. Well, of course, we asked for funds to do a survey and do something like that in connection with the Ad Council.

Mr. **Skeen**. But you have not gotten that?

Ms. **Elliott**. We have not gotten the funds for that.

Mr. **Skeen**. Who turned the funding down on that?

Ms. **Elliott**. The Congress.

Mr. **Skeen**. The Congress did?

Ms. **Elliott**. Yes.

Mr. **Skeen**. Tell us who it was.

Ms. **Elliott**. Everybody.

Mr. **Skeen**. Okay. Good.

Ms. **Elliott**. There was not anybody that was for that. [Laughter.]

Mr. **Skeen**. I just did not want you to stumble over saying who. If Congress did it, tell them Congress did it. [Laughter.]

Mr. **Skeen**. We cut it out of there.

Ms. **Elliott**. Yes. We have a minute amount we are using to get out news releases and talk about it. I have been on radio and doing everything I can just to tell the people that we do not either advocate or not advocate the system; we administer the system and we are just trying to be as factual as possible to say what is happening to the system.

There are people who feel that the checkoff should not exist and they are in the Congress. There are people who feel it is wonderful and they are also in the Congress and they both agreed that we should not finance an education campaign.

Mr. **Skeen**. Yes. The thing I am getting at is an educational program has to be positive rather than negative.

Ms. **Elliott**. Oh yes.

Mr. **Skeen**. And unfortunately I think you would be forced, if you had to take this totally neutral position of advocacy for your own program, that it would had to have been a negative kind of educational program.

Ms. **Elliott**. No.

Mr. **Skeen**. We are not getting the money in; you are not supporting it. And I would think probably it would be better to explain what the system is, as you are probably doing.

Ms. **Elliott**. Yes.

Mr. **Skeen**. I do not understand why we have been reluctant, because we in Congress are talking about now giving you even more responsibility under the Ethics Act. And I think you are walking into a quagmire here. And if Congress is not going to support it as it is now, how are we going to support this further under the Ethics provisions?

And then extend it just one more step further and talk about putting the Congressional election in this thing. How would you like to handle that?

Ms. **Elliott**. Well, if you do any of that, just put a great big dollar sign at the end of it. We cannot do everything we feel we are supposed to do with the budget. We do not have the space to do these other things; we do not have the personnel; we do not have anything necessary to do that. When these other plans come through, please put a little financing along with them.

Mr. **Skeen**. That is very interesting, because if we mandate, with the situation as it is now, you would have to say that you have a system that is not being supported either by the public or by the

Congress. And you are asked to do an impossible thing, to make a success of something that should have generally accepted support.

We are pumping money now from the Federal Treasury into keeping a system that was supposedly, idealistically, going to be almost more or less self-supporting. You do not have the personnel to do it with and you have to come to us to get that, because it is very personnel-intensive.

How many lawyers are we feeding over there?

STAFFING

Mr. **Skeen**. You mentioned the cases. You had this one individual who has taken you clear through the Supreme Court and you certainly did not do it at cost.

Mr. **McGarry**. No.

Mr. **Skeen**. Do you have your own attorneys?

Mr. **McGarry**. We do. We have exclusive jurisdiction, civil jurisdiction. So we do not refer matters to the Justice Department. That is why we have 43 cases pending in Federal Courts around the United States right now. We have 48 attorney positions, to give you a direct answer.

Mr. **Skeen**. Forty-eight attorneys on your staff?

Mr. **McGarry**. Yes.

Mr. **Skeen**. Out of a staff complement of how much? How many?

Mr. **McGarry**. The total staff is 253 for this year.

Mr. **Skeen**. 253.

Mr. **McGarry**. We are at that staffing level right now.

Mr. **Skeen**. About one-fifth of them are attorneys.

Mr. **McGarry**. We increase as we go through the year.

Mr. **Skeen**. Twenty percent of them are attorneys.

Mr. **McGarry**. Right. We have exclusive legal jurisdiction under the law.

Mr. **Skeen**. I do not have anything particular against attorneys, unless I become involved with them.

[Laughter.]

Mr. **Skeen**. Or have to legislate with them.

[Laughter]

Mr. **McGarry**. I worked in the House as Special Counsel on Elections.

Mr. **Skeen**. Did you?

Mr. **McGarry**. And I always remember, Mr. McCormack was Speaker, a lovely gentleman, Lord have mercy on his soul—came from that part of the world and he was a wonderful, kind and gracious gentleman. He was wonderful to me. But I will always remember where he had a case and he had outside counsel. It was Adam Clayton Powell. You might recall.

Mr. **Skeen**. Oh yes, very well.

Mr. **McGarry**. And when he got the legal bill for that, it was over a million dollars, and I thought I would have to get him oxygen. [Laughter.]

Mr. **McGarry**. It was unbelievable. And I think what we do with some of these cases—and the bill is very minimal. This one case arose out of the 1980 Presidential election—we are going to close it out in a couple of weeks; an independent expenditure case where somebody violated the law and spent thousands of dollars without reporting it.

We ultimately prevailed, but this has a dramatic impact, and that is just one case. And that is only a small part of the overall activity that we are engaged in.

Mr. **Skeen**. That is right. But it is a very expensive part of it.

Mr. **McGarry**. Very. And it is a very important part.

Mr. **Skeen**. I understand that.

Mr. **McGarry**. These are critically important and at the same time complex issues in the financial community.

Mr. **Skeen**. So these fees all come out of your appropriation?

Mr. **McGarry**. Absolutely. Absolutely.

Mr. **Skeen**. Justice does not bear any support of this thing?

Mr. **McGarry**. Right. All of the costs come out of our budget.

Mr. **Skeen**. I appreciate the job that you do and also the things that we ask you to do and those things that we demand that you do. I think that for the price or total amount of your budget, you do an outstanding job and you are operating under an awful onus here with a deficit that we cannot even plan for.

But somewhere along the line we have to do our part and help you with the educational side. We have to support you if we are going to believe in this campaign system. We are not a very good example, frankly, to other countries because what we do is we preach a lot of times.

Election response, just in bodies going to vote who are eligible to vote, is something of a national disgrace. The financing is a very difficult problem because we do not do anything and we should not probably hold the time and the tenor of campaigns.

The British have a system where you campaign for two weeks and you can spend so much and that is it. You get free television time and so forth.

Well, that might be very efficient but it is not going to be the American way. But we are going to have to support this system if we are going to do it.

Mr. **McGarry**. I appreciate your comments. I would only add that I personally have been around a while and I honestly feel privileged to be serving with some of the finest people who are totally committed and who go above and beyond what is required in this position.

Mr. **Skeen**. I am sure that is correct.

Mr. **McGarry**. I may not agree with all of them all of the time. We have some very lively debates.

Mr. **Skeen**. That is the lovely part of this country. We do not always agree. That is what makes it so wonderful.

Mr. **McGarry**. You could not be with nicer people, more professional people who really go over, way over and beyond in the time and energy and commitment that they give to the work.

Mr. **Skeen**. Well, I appreciate your responses and I appreciate the work that you are doing and also the burdens that you have to carry on this thing. You present yourself well. I do appreciate, too, the contribution you folks make all the time on a day in and day out basis, year in and year out, as a matter of fact.

I think we have sat across this table now for about six years.

Mr. **McGarry**. That is right, Mr. Skeen.

Mr. Skeen. Thank you.

Mr. McGarry. Thank you very much, Mr. Skeen.

REPRESENTATIONAL FUNDS

Mr. Roybal. Before I ask Mr. Akaka, I would like to come back to the $5,000 item.

Mr. McGarry. Yes, sir.

Mr. Roybal. This committee, as you know, is the appropriations committee and we usually do not appropriate anything that is not authorized.

It is my understanding that the $5,000 in question is not authorized. Is that correct?

Mr. McGarry. At this point, nothing is authorized as far as the authorization of our request is concerned, Mr. Chairman.

Mr. Roybal. You mean nothing of the $17 million is authorized?

Mr. McGarry. No. There is no authorization bill at this moment. That will come to pass.

Mr. Roybal. Which means that anyone can make a point of order and knock you off on the floor?

Mr. McGarry. At this point, yes. We do have agreement, which we have not had in the past, with the Office of Management and Budget on numbers in the present budget that came to the Congress, but the authorization is yet to come in the process. Yes, sir.

Ms. Elliott. Sometime later in the summer.

Mr. Roybal. And if it is not authorized, then they are subject to a point of order on the floor.

Mr. McGarry. Right.

Mr. Roybal. If we go back to our bill, Mr. Skeen, most of the accounts in our bill are not authorized anyway. [Laughter.]

Mr. Skeen. I was just going to point that out to you.

I will tell you one better than that. The Mint has not been authorized. It has not been authorized for several years. No IRA or C or B or D, whatever it is.

Mr. McGarry. Right.

Mr. Skeen. So it is not unusual. But we do think the coffee fund over there is going to cost something.

Mr. McGarry. It is an awfully important item. And we have been paying for it.

Mr. Skeen. You call it the what fund?

Mr. McGarry. The representational fund.

Mr. Skeen. That is very neat, too. I like that. [Laughter.]

Ms. Elliott. It has to appear in this committee's language for us to use it. And it is not solely for Russians. [Laughter.]

Ms. Elliott. Since the first of the year, we have had at least eight or ten different countries that have sent representatives to us, all the way from the Ivory Coast to Holland to Japan and all kinds of people are just desperate for this knowledge.

Mr. Roybal. That money is to be spent for representation in the United States?

Ms. Elliott. In the United States only.

Mr. McGarry. And if it is not, it cannot be used for anything else.

Now the Office of Management and Budget, Mr. Chairman, was of the opinion that we did not need specific language in the appropriation bill. But our General Counsel researched it and disagrees with them and feels that there should be specific language in the appropriation bill or otherwise we would not have any right to use it for that purpose.

Mr. **Roybal**. You mean OMB has made a mistake? [Laughter.]

Mr. **McGarry**. I withdraw that. [Laughter.]

Mr. **Roybal**. With that, I will recognize Mr. Akaka.

Mr. **Akaka**. Thank you, Mr. Chairman. Madame Chair and Vice Chairman, good to have you here.

Ms. **Elliott**. Thank you.

Mr. **Akaka**. There is no question that my colleague and good friend, Mr. Skeen, is like a sheep that cuts the grass close to the ground. [Laughter.]

Mr. **Skeen**. No, that is an old rumor, Mr. Chairman.

CONTRIBUTIONS BY FOREIGN NATIONALS

Mr. **Akaka**. The statements that were just made before I was called on, were about foreign countries.

Last year, you reiterated to this subcommittee that the FEC Act clearly and expressly prohibits campaign contributions by foreign nationals to federal, state and local candidates for any political office.

Ms. **Elliott**. That is true.

Mr. **Akaka**. So there should be no question.

Ms. **Elliott**. No question.

Mr. **Akaka**. And yet Common Cause reports that 33 of the 50 states in our country were unclear on even unaware of the prohibition.

This concerns me. My question to you is what actions have been taken by the FEC to notify state election officers in no uncertain terms of this provision of the law?

Ms. **Elliott**. I do not believe any particular notice has been sent to them. But since our last appearance here, we have had several advisory opinions asking about that. We have covered those in our own publications which are disseminated into every state. Everything we do is covered by the sunshine regulations and is public. Everybody has the opportunity to know.

I cannot say how many do know. I think we surprise some members of the Congress occasionally on what we do because of what is required by the Act and what is not.

Mr. **Akaka**. I am glad to hear that they would have the opportunity to know.

Ms. **Elliott**. We have not aggressively, to my knowledge, sent anything directly to anyone. I do not know exactly who we would send it to, unless it would be an Attorney General or somebody like that.

Mr. **Akaka**. Yes.

Ms. **Elliott**. Somebody in the enforcement field.

Mr. **Akaka**. My question to you, and I guess you are answering it, is whether you have implemented any candidate information campaign in the states?

Ms. **Elliott**. Oh yes. Every candidate that files with us receives our Record and we carry articles on just those types of subjects, anything that is new or vibrant or could be misleading. We go to every effort that we can to keep people out of trouble.

Mr. **Akaka**. Is the ban on foreign contributions emphasized during conferences on campaign finance that the Commission cosponsors with states? Is the ban on foreign contributions emphasized?

Ms. **Elliott**. Yes. We just finished one in Phoenix, Arizona. That was an emphasis. Also in San Francisco that was mentioned.

DEMOCRATIC REFORMS IN EASTERN EUROPE

Mr. **Akaka**. I was interested in the second page of your work with some of these countries in eastern Europe. Indeed, it is exciting and important work, as you mention here.

What kind of expertise do you offer these nations from the United States? I assume—and there was a concern by my colleagues—that after all of this upheaval, what happens? How do they set up the mechanisms for elections in a free and fair manner? And are they doing it?

My question is: What kind of help are you giving these countries in that respect?

Ms. **Elliott**. It varies. Some are interested in virtually what we would call the constitutional aspects: who has the authority and how does that run?

Others are more practical. In fact, the Russians are honing in on election administration. Since we house the Clearinghouse on Election Administration, we keep the laws. We are the repository of all the information as to how the states act and we give them publications and explanations and lectures and whatever else they need. In fact, we have even translated a little of it into Russian, so that it is in wide distribution there.

Mr. **Akaka**. It was also exciting to note that some of you went to those countries and they have also send delegations here.

Ms. **Elliott**. And tomorrow we are going back.

Mr. **Akaka**. Oh, you are?

Ms. **Elliott**. A few of us.

Mr. **Akaka**. I hope this will result in a clearer idea of how they can run their elections.

Ms. **Elliott**. Yes.

Mr. **Akaka**. And if it works, I think you should be congratulated.

Did you provide the Soviet Central Election Commission any technical assistance?

Ms. **Elliott**. Oh, yes.

Mr. **Akaka**. You have been.

When did you begin that?

Ms. **Elliott**. It began with a dialogue with the Embassy prior to our trip in June of last year. Of course, any country that wants any of our materials, no matter how we get the request, either through a citizen or through an Embassy, we give as much information as we can.

Mr. **Akaka**. Have you received any requests from other eastern Europe countries for assistance?

Ms. **Elliott**. Requests have come from Japan, Shanghai, Korea. We have had people from the Ivory Coast in, from Holland, from Chile, I believe. Just a passing parade of people who come in and want to see us.

Mr. **Akaka**. I know all of these activities must require additional funds.

Ms. **Elliott**. We do not spend any additional funds on that. If they get a cup of coffee, then that is the Commissioner's treat who is talking to them. If they get the materials, that is in the materials that we already have on hand. And that is the extent of it. We do not spend anything to do that.

. Mr. **Akaka**. I see.

Ms. **Elliott**. Just our time, you see.

FY 1991 BUDGET REQUEST

Mr. **Akaka**. I wondered, looking at your budget here, is this in order of priority?

Ms. **Elliott**. No, I do not think we should say that it is the order of priority. That is the order of our budget, the order of our books. Wouldn't you say that?

Mr. **McGarry**. That is absolutely correct, Madame Chairman.

Mr. **Akaka**. I want to thank you.

Ms. **Elliott**. We have an absolute 100 percent priority for every one of those items.

Mr. **Akaka**. Yes.

Ms. **Elliott**. And if you need more, we have got another list. [Laughter.]

Mr. **Akaka**. Well, I am glad I made that clear.

I want to thank you very much for your responses.

Ms. **Elliott**. Thank you.

Mr. **Akaka**. We know you have a tough job and it is getting tougher.

Ms. **Elliott**. Yes.

Mr. **Akaka**. But you are doing a great job.

Ms. **Elliott**. Thank you very much, Mr. Akaka.

Mr. **Akaka**. Thank you, Mr. Chairman.

Mr. **Roybal**. Madame Chairman, I would like to thank you and the Vice Chairman for your testimony.

Ms. **Elliott**. Thank you.

Mr. **Roybal**. We have a letter from Ms. Elliott dated Feb. 12, 1990, which will be inserted in the record at this point.

Ms. **Elliott**. Okay.

Mr. **McGarry**. Thank you very much.

Mr. **Roybal**. Thank you very much.

We will be in recess for about ten minutes.

[The letter and budget justifications follow:]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

OFFICE OF THE CHAIRMAN

February 12, 1990

The Honorable Edward R. Roybal
Chairman
Subcommittee on Treasury, Postal Service
  and General Government
House Appropriations Committee
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In November and again in April of 1989, we reported on an impending shortfall in the Presidential Election Campaign Fund. This letter updates those projections. It now appears probable that the shortfall we previously projected as hitting during the 1996 Presidential election will occur instead during the 1992 election.

This projection is based on the latest information on two of the key variables we must consider. The first of these is the level of taxpayer participation in the check-off funding vehicle; the second is the rate of inflation.

While participation in the check-off continues to decline, the primary factor in this impending imbalance is the rate of inflation, which governs the outflow of funds to the Presidential committees. Outlays from this fund are inflation indexed, but the revenues that flow into this fund are not. A primary candidate's entitlement to matching funds and the outright grant for the general election candidates and the party conventions are statutorily adjusted each year for inflation, with the result that by 1988 the spending limits had more than doubled over the 1976 base. There is, however, no corresponding statutory adjustment to the funding mechanism. The dollar option that first appeared on the tax return in 1973 remains but one dollar today. What this means is that the decline in the fund balance would have occurred even if tax check-off participation had remained constant.

The enclosed tables set forth the historical data and assumptions that lead us to the conclusion that the shortfall will occur in 1992. If the rate of inflation over the next two years averages 4.5% or better, the Secretary of the Treasury will be unable to provide Primary candidates with their full entitlement.

Legislative action is needed soon to preserve the integrity of the program. Our present analysis persuades us that the projected shortfall in 1992 was inevitable from the outset of this program. A relatively static input of tax-dollars combined with an ever increasing outlay of funds leads to this end as a matter of course. We urge Congress and the Administration to work together to amend the law to provide for adequate funding for the 1992 election and to secure reliable funding for future Presidential elections.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures

FEDERAL ELECTION COMMISSION
FY 1991 BUDGET REQUEST
SUMMARY OF DIFFERENCES FROM FY 1990

FY 1990 APPROPRIATION:	**$15,330,000**
FY 1991 SALARY AND BENEFITS INCREASES:	**574,000**
Merit Pay: $55,000*, Within-Grade Increases: $101,000*, FY 1991 Costs of 1/1/90 3.6% Pay Raise Absorbed in FY 90: $274,000*, FY 1991 Annualized cost of 1/1/90 Pay Raise: $84,000* FEC Share of 1/1/90 Increases in Health Insurance Absorbed in FY 90: $60,000*.	**$15,904,000**
FY 1991 3.5% PAY RAISE:	**150,000**
Full cost $300,000: 50% absorption*	**$16,054,000**
RENT INCREASE BY GSA:	**81,500**
4.87% Increase*	**$16,135,500**
ADP COSTS:	**19,000**
Inflation and several years of absorbed costs	**$16,154,500**
RESTORE EQUIPMENT BUDGET TO NORMAL:	**90,000**
Equipment replacement cut 40% in FY 90 plus absorbed inflation for several years	**$16,244,500**
RESTORE CLEARINGHOUSE TO BASE LEVEL:	**40,000**
Research contracts cut 40% in FY 90	**$16,284,500**
ADDITIONAL COST OF IG OFFICE:	**28,000**
Cost of 2 FTE for full year	**$16,312,500**
PERSONNEL INCREASES:	**441,000**
13 FTE (Staff)--6 in Audit, 4 in OGC, 1 in Data Systems, 1 in Staff Director, and 1 in Administration	**$16,753,500**
FIREPROOF COMPUTER ROOM:	**105,000**
Increase size of and upgrade fire protection	**$16,858,500**
COMPUTERIZE AUDIT FIELDWORK:	**50,000**
Provide portable PC's for audit fieldwork	**$16,908,500**
PRESIDENTIAL FUND EDUCATION PROGRAM:	**116,000**
	$17,024,500

REPRESENTATIONAL FUNDS	5,000
	$17,079,500
INFLATION/INCREASES IN ADMIN. SUPPORT Represents $73,500, or 1.6% increase for inflation over FY 1990 non-personel costs. Includes $47,000 for additional space for 13 FTE and a separate IG Office	120,500 $17,150,000
FY 1991 FEC BUDGET REQUEST:	**$17,150,000**

---

* Costs mandated by law and not controllable by the FEC

FEDERAL ELECTION COMMISSION
FISCAL YEAR 1991 BUDGET REQUEST

FY 1991 BUDGET REQUEST AND AGENCY MISSION

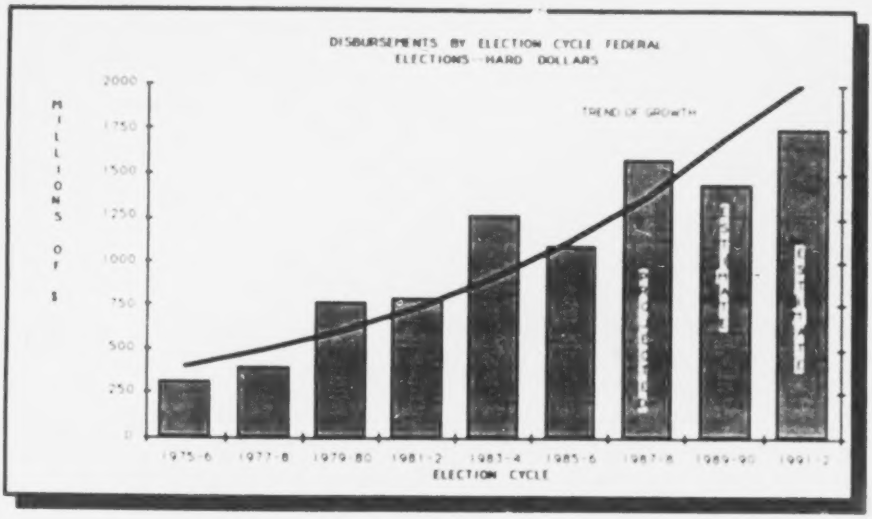
For FY 1991 the Federal Election Commission submits a Budget Request of $17,150,000 and 266 FTE in agreement with the Office of Management and Budget, as contained in the President's FY 1991 Budget submission to Congress.

The Federal Election Commission is charged with implementing and enforcing the Federal Election Campaign Act (FECA) as amended. This includes facilitating public disclosure of campaign finance activity, providing information to the public, press, and campaign officials on the FECA and campaign finance, obtaining voluntary compliance with the disclosure requirements and substantive proscriptions of the FECA, and enforcing that disclosure and compliance through audits, investigations, and/or litigation. The Commission also is charged with implementing the Presidential campaign funding programs for both the primary and general election campaigns of qualified Presidential candidates. This includes certification, audit, and enforcement of the provisions of the public funding legislation concerning the use of federal funds.

In FY 1991 general elections will be held for 34 Senate and 435 House seats. Based on past experience, over 2,000 candidates will run for Congress and well over 4,200 political action committees (PACs), plus the party committees will be actively engaged in the electoral process. For the 1986 congressional election cycle, about $1.1 billion in regulated campaign finance activity was recorded. This was almost 47 percent higher than the roughly $750 million in 1982. Final spending for the 1988 cycle is expected to reach $1.5 to $1.6 billion. All past history indicates that total reportable spending for federal elections in 1990 should approximate $1.45 billion.

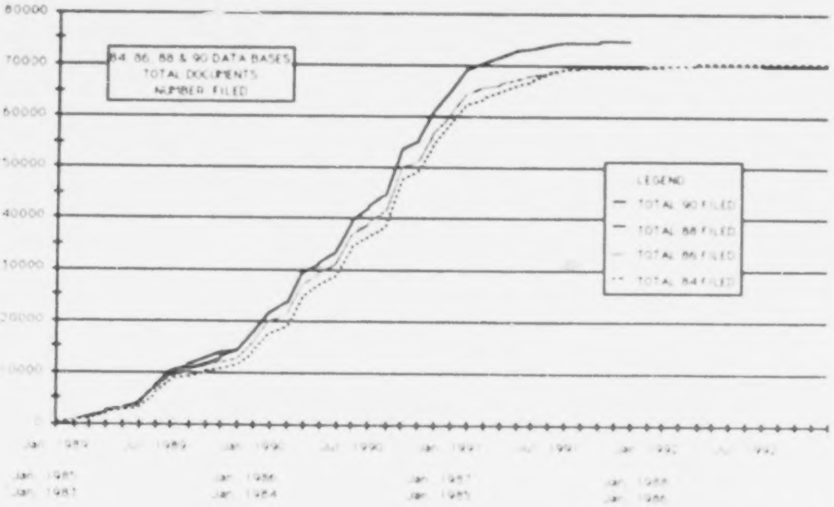
While the Commission's main focus in FY 1991 will be the conclusion of the 1990 Congressional elections, the FEC must also look forward to the 1992 Presidential election cycle. Again based on past history, the FEC expects between about $1.75 and $2.0 billion in campaign finance activity for the 1992 elections.

FUNDS–DISBURSED BY POLITICAL COMMITTEES BY ELECTION CYCLE FOR FEDERAL ELECTIONS--HARD MONEY REPORTABLE TO THE FEC



Workload statistics for 1989 reveal the increase in basic Commission workloads over past election cycles. For example, as of the end of December 1989, the number of campaign finance disclosure documents filed with the Commission for the 1988 election cycle had increased by 7.5 percent over the 1986 election cycle, and by 7.3 percent over the 1984 election cycle (for a comparable point in the election cycles.) By December of 1989, the total documents filed at that point in the 1988 cycle had exceeded the total filed for the entire 1984 cycle by 6.6 percent. This increase is continuing for the 1990 cycle, with documents filed as of December 31, 1989, 3.2 percent higher than 1988 and 15.5 percent higher than 1986 at comparable points in the election cycles.

FOUR YEAR CYCLES DOCUMENTS FILED(83-86, 85-88, 87-90, 89-92)
CHRONOLOGICAL COMPARISON, 90 CYCLE TO PREVIOUS CYCLES

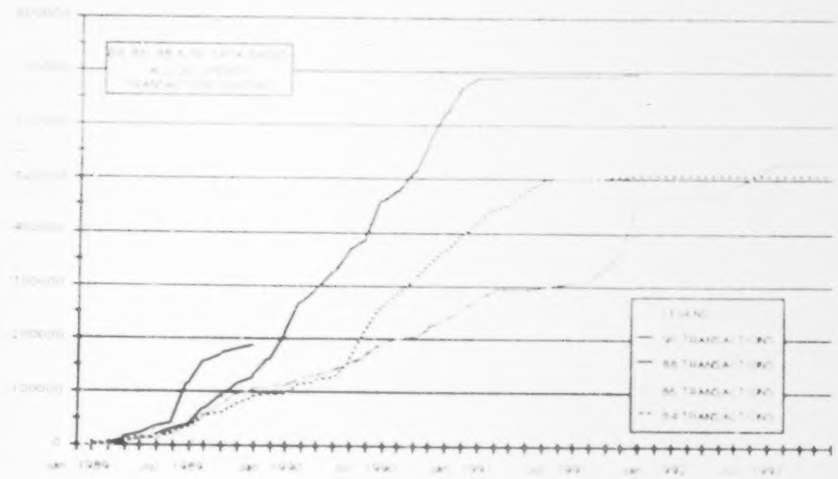


Also by December 1989, the volume of itemized data entered into the computerized disclosure data base had increased by a staggering 52 percent over the 1986 cycle, and by 36 percent over the 1984 cycle (at comparable points in the election cycle.) The FY 1986 Gramm-Rudman-Hollings (GRH) sequester had a severe impact on FEC data entry. The cut-backs delayed completion of the 1986 cycle data entry until FY 1988. The Commission has since restored its data entry for itemized data back to pre-GRH levels.

Even adjusting for the impact of the cut-backs and the resulting delays, the totals still show an increase in data entered: the 1988 cycle shows 691,826 transactions as of December 1989, while the entire 1986 and 1984 cycles show 528,761 and 507,461 respectively. This represents a 31 percent increase from 1986 and a 36 percent increase from 1984, with one year remaining in the 1988 cycle.

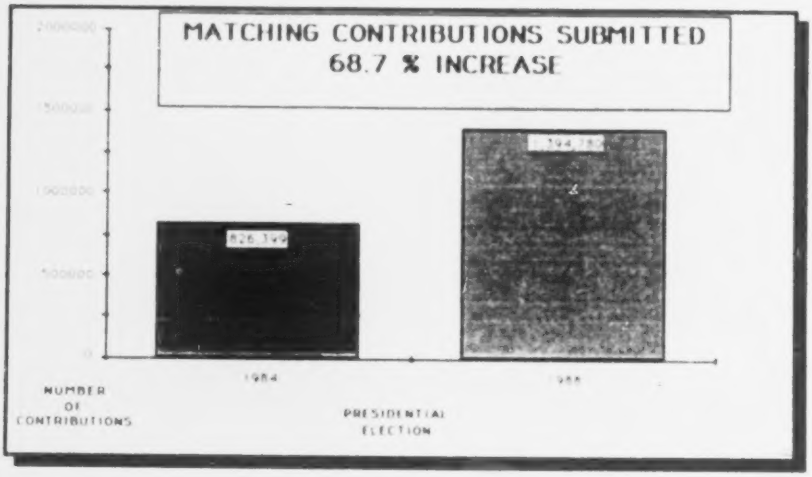
The growth is continuing for the 1990 cycle; the first year of the cycle shows a 44.5 percent increase over 1988 (at a comparable point in the cycles) with increases of 76 percent and 108 percent over the 1986 and 1984 cycles. Some of this increase is due to the FY 1989 and FY 1990 funding levels, which enabled the Commission to enter all statutorily required disclosed contributions of $200 or over, as opposed to previous entry of only contributions of $500 or more. This request continues funding for the entry of $200 to $500 contributions. Sufficient funds for such entry did not exist prior to the 1990 election cycle.

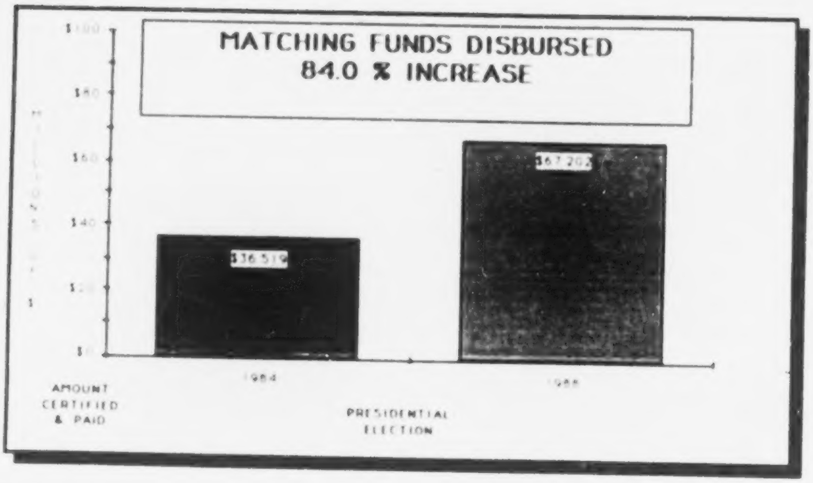
FOUR YEAR CYCLES TRANSACTIONS ENTERED(83-86, 85-88, 87-90, 89-92)
CHRONOLOGICAL COMPARISON, 90 CYCLE TO PREVIOUS CYCLES

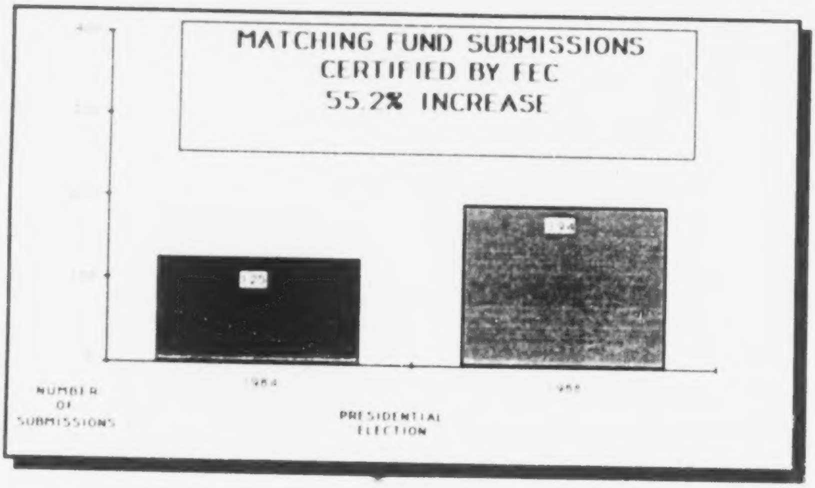


Furthermore, the number of documents and transactions has increased even when the presidential election activity and GRH are factored out. As of December 31, 1989, a total of 184,826 transactions had been entered into the data base for the 1990 election cycle. At comparable times, December 31 of the first year of a four-year data base, the totals were 127,924 transactions for 1988, 105,011 for1986, and 88,920 for 1984. For the two-year period ending December 1988, 914,494 transactions had been entered for the 1988 and 1986 cycles. The comparable total in December 1986 for the 1986 and 1984 cycles was 376,195. This increased campaign finance activity impacts on all Commission programs from filing, processing, microfilming, coding, entering, reviewing, and ultimately referring for possible audits and/or enforcement actions.

The Presidential public funding programs are further evidence of the workload increases. As of July 1989, the Commission had reviewed and certified for disbursement $67,202,368 in federal matching funds for the 1988 primaries. This compared to $36,519,405 in1984. As of August 25, 1989, the Commission had certified 1,394,780 contributions from 1,245,501 contributors for the 1988 presidential primaries, again compared to only 826,399 contributions from 793,565 contributors for the 1984 primaries. This reflects an increase of 55% in the number of submissions reviewed by the Commission, a 69% increase in contributions submitted, and an 84% increase in the amount of money disbursed. The Commission is now in the process of completing the statutorily mandated audits of the use of these funds.





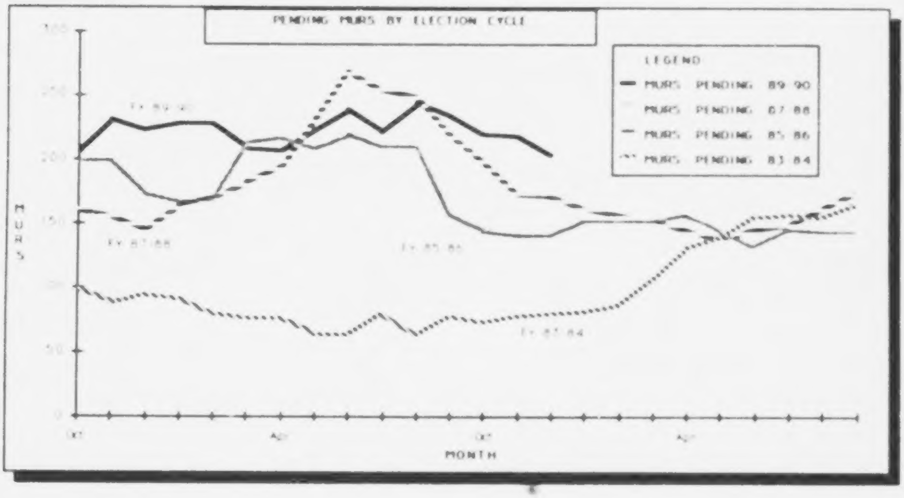


Enforcement also reflects the growth in workloads During FY 1987 the Commission had as many as 267 open enforcement actions or Matters Under Review (MURs) Through a concerted effort the number of active cases had declined to 148 by the end of July 1988, although a large number of very complex and politically sensitive proceedings remained open If past experience holds true, and it appears to be so, the thorniest legal issues arising from the 1988 elections will come in the form of the investigations initiated in FY

1989, often as the result of the completion of audits and/or the reports review process. Many of these cases will continue into FY 1990 and 1991 as they proceed through the court system.

As of December 31, 1989, there were 201 active MURs, compared to 139 on December 31, 1985, or a 45 percent increase (there were 171 active MURs in December of 1987.) At the end of FY 1987-88 173 MURs remained open, compared to 163 at the end of FY1983-84, or a 6.1 percent increase. The Commission closed a total of 426 cases in FY 1987-88, compared to 267 cases in FY 1983-84, or a sixty percent increase. Therefore, at comparable points in the presidential election cycles, there are clear increases in the Commission's enforcement workload.

ACTIVE ENFORCEMENT CASES BY TWO-YEAR PERIOD



This quick review of some of the rising workloads experienced by the Commission is convincing proof that the Commission must have adequate funding to meet its responsibilities under the FECA. The importance of full staffing and funding levels is borne out by the Commission's experience during FY 1988. Full staffing and the support for that staff enabled the Commission, by the mid point of July, to be virtually current for the entry of itemized data into the disclosure data base going into the election peak period--a first for the Commission. Therefore, it is imperative that the Commission receive adequate funding to fully support a full 266 FTE in FY 1991 at a minimum. The funding and staff requested for FY 1991 are vital to maintaining and improving on the output and productivity of the FEC in the performance of its mission. This in turn is required to maintain the public's confidence in the electoral system.

FY 1991 BUDGET--FEC REQUEST

As a concurrent budget submission agency, the Commission submits its Budget request directly to the Congress at the same time as it submits one to OMB. The Commission has emphatically determined it must submit a budget request which fully enables the FEC to perform its mission. After granting the Commission a hearing, thoroughly reviewing our written request, and negotiating an initial appeal, OMB proposed and the FEC accepted a level of funding of $17,150,000 and 266 FTE. This provides for the base funding the Commission deemed necessary to carryout its regulatory mission, plus some important initiatives with regard to the presidential checkoff fund. As such, we are in agreement with the President and OMB for FY 1991.

The Commission's FY 1991 Budget request recognizes that the two prior fiscal year base budgets were somewhat inadequate. The Commission had to secure an emergency supplemental in FY 1989 to avoid furloughing staff and had to amend the FY 1990 Budget Request to cover alarming increases in employee health benefits.

The previous budgets have been eroded by the forced absorption of mandated annual pay raises, health benefit increases, and higher agency costs for retirement benefits. Personnel costs compose 70% of the Commission's budget and it is no longer possible to absorb pay increases without reducing the staff. Also, as a relatively new agency with a relatively young staff, the FEC has a high percentage of FERS employees which costs the agency significantly more than CSRS.

Mandated rent increases, establishing an IG's office, and increasingly high travel, telephone, postage, and printing costs have not been funded adequately. But most importantly, the ever increasing amount of campaign finance activity makes the budget request an honest reflection of what the Commission requires to achieve its mission. The rise in campaign finance activity is beyond the Commission's control. The FEC must keep up with it to fulfill the statutory obligation to provide timely public disclosure and enforcement.

Accordingly, the Commission's FY 1991 Budget Request is for $17,150,000 and 266 FTE. This Budget includes the 3.6 percent pay raise in January 1990 carried over to FY 1991 and partial coverage for a 3.5 percent pay raise anticipated in January 1991. Without this requested amount the Commission will lack the money and staff necessary to fulfill the most basic mission during the 1990 elections and prepare for the presidential race in 1992.

The Budget includes ongoing support for the new and highly successfull Office Automation system and keeps personnel and services in parity with increasing campaign finance activity. It recognizes that the Commission has more reports to disclose and review, more audits to perform, and more enforcement cases involving more money with more respondents and tougher issues.

The Commission originally requested funding for items identified as enhancement requests for additional projects, or additional staff for existing programs, totalling $1,795,000 and 14.8 FTE. The only projects afforded by the final agreement reached with OMB include representational funds and an education program regarding participation in the presidential election fund tax checkoff.

REPRESENTATIONAL FUNDS

The first item is a request for a specially earmarked $5,000 for representational funds to allow the Commission to host foreign elections officials, and state and local officials, at Commission sponsored and hosted conferences on campaign finance and elections. This fund would also allow the Commission to host visits by individuals and specific groups in addition to conference attendees. These funds could not be used for any other expenditures. As the only federal agency with a specific election mission, we are being called upon with ever greater frequency to lend our expertise to the global movement towards more democracy and elected governments. Foreign delegations expect and deserve a modest recognition of their importance.

TAX CHECKOFF PUBLIC EDUCATION PROGRAM

An item requested for FY 1990 but unappropriated was a public education program regarding the 1040 tax form checkoff for the Presidential Campaign Fund. FEC discussions with the National Advertising Council indicated that, despite free air time, one could expect to expend up to $250,000 for a full scale multi-media campaign. The full NAC approach requested in FY 1990 would have involved the Council, under the Commission's direction, in developing, producing, and promoting a full-scale education program utilizing the complete spectrum of advertising media. All other costs would have been borne as a public service by the advertising industry and media. A re-request of the NAC approach would require $250,000 to $300,000.

As a lower cost alternative the Commission is now planning a scaled down approach. This lesser option would have the Information Division prepare an array of videos and/or brochures for dissemination to media in order to enhance public awareness of the program. This includes the following:

Survey of tax filers--a contract for an extensive survey of tax payer attitudes, knowledge, and awareness of the tax checkoff program and its purpose.

Brochure for CPA firms--printing, production, and design costs.

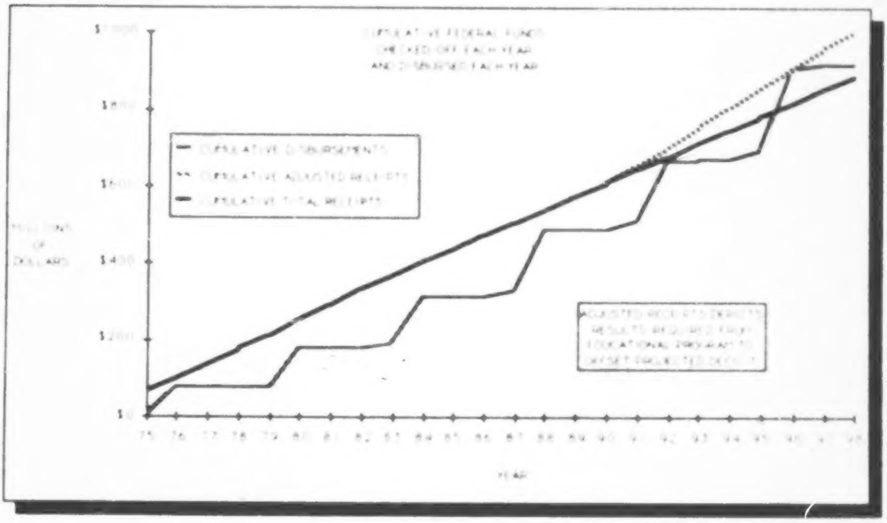
Public Service Announcement video--design and production, copies to be made available for station use.

Video--a video on the checkoff and the funding program.

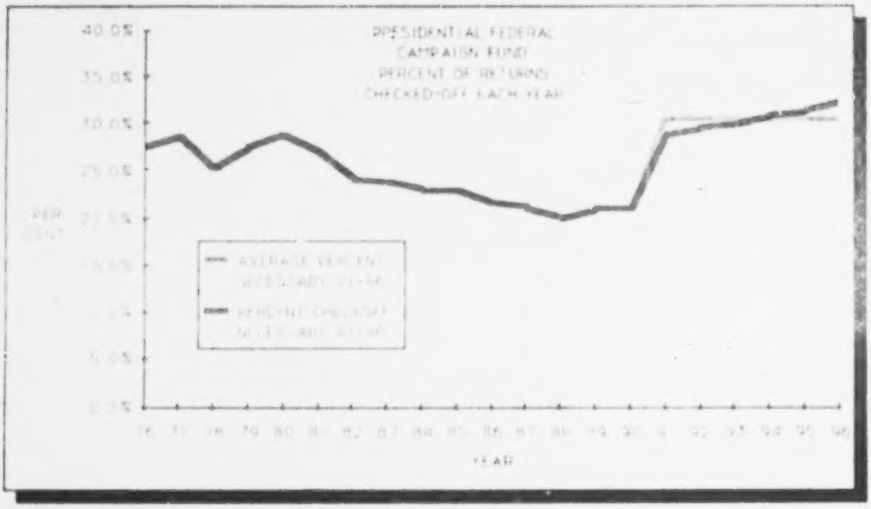
Since its first application in the 1976 election, the payments of public funds to primary and general election presidential candidates have increased dramatically by operation of the inflation adjustment of 2 U.S.C. §441 a(c). There is no corresponding statutory inflation adjustment, however, to the amount on the Form 1040 check-off box. The amount remains the same one dollar option created in the Revenue Act of 1971, and first appearing on the 1973 returns.

The potential shortfall in the Presidential Election Campaign Fund by 1996 is estimated at between $120,000,000 and $140,000,000; most likely less than $1,000,000 will be left at the end of 1992. The latest projections by the Commission audit staff indicate that there is also the possibility that the fund will run short in 1992, although not by a major amount. A $120,000,000 shortfall in 1996 would require about a $19,000,000 increase in checkoff revenues per year for six years, in order to cover the deficit. Therefore, a request of $116,000 represents an expenditure of 0.1% of the projected shortfall for a program which has been effectively administered by the Commission, and used by virtually all presidential campaigns since its enactment in 1976. Total cost of all the Information proposals would be $116,000.

CONDITION OF PRESIDENTIAL ELECTION FUND



PERCENT OF TAX RETURNS CHECKED-OFF BY YEAR



DIVISIONAL SUMMARIES

Commissioners: 20.0 FTE and $25,000 in travel

Staff Director's Office: 22.0 FTE

Administration Division: 17.0 FTE reflecting one additional FTE over FY 1990.

Audit Division: 28.0 FTE which reflects the need to gear up for the 1992 elections. The Division will finalize all issues arising from the 1988 presidential committee certification and audit processes. the Division will also perform audits of authorized and unauthorized committees referred through the review process from the 1990 elections. This represents six additional staff over FY 1990 levels to begin to build staff back up to FY 1980 levels.

The Audit Division has attempted to handle the Presidential Committee audits with a core staff of only 24 FTE supplemented by detailees from the GAO and up to six temporary employees to perform reviews of certification requests for federal matching funds. The GAO supplement is composed of from to five or six GAO auditors on non-reimburseable detail for 16 months. While this staffing worked reasonably well for the 1984 election, difficulities have occurred for the 1988 election. The Audit Division has lost a pool of experienced lead auditors, and the nature of presidential campaigns is such that more experienced auditors are required. Thus, the Audit Division requested six additional auditors for FY 1990, to bring the staff up to 28 FTE.

Staffing for the 1980 election had a planned level of 42 FTE, with actual staffing exceeding 36 most of the election cycle. This request would represent a return to that type of staffing pattern, supplemented by temporaries in FY 1992, and also some GAO auditors. In any case, more experienced on-board staff is required to successfully manage the program. Failure to receive funds for these positions in order to train the new employees in time for the 1992 election could hamper the Commission's ability to successfully implement the Presidential election funding programs in 1992.

Information Division: 13.0 FTE. In 1991 the Division will continue the FEC outreach efforts through the publication of the Act, Regulations, the *FEC Record*, the Campaign Guides, and the various brochures, as well as through the phone lines information service. The Division will also hold two State Workshops on campaign finance laws in two yet to be determined sites. The Division will also host two Washington conferences on elections and campaign finance, as well as send small teams of information specialists to 9 to 10 sites to hold mini-workshops. Funds are also requested for the checkoff education program.

Office of General Counsel: 77.0 FTE, which includes four enforcement teams of six positions as set-up in FY 1989, and four additional positions over FY 1990. These positions are to ensure enforcement workloads are met, and that timeliness of resolving enforcement actions is improved. OGC will attempt to conclude the remaining legal matters arising from the 1988 election cycle and process the 1990 election cycle matters.

Data Systems: 31.0 FTE. The division will code and enter an estimated 65,000 documents for Summary disclosure information, mostly from the 1990 election period. An estimated 45,000 documents containing a projected 500,000 itemized transactions will also be coded and entered. The cost of the basic ADP contract will be $540,000, with data entry costing $50,000. The State and Direct Access Programs (SAP and DAP) should cost about $30,000, while the cost of maintaining the new ADP system should be about $220,000. The cost of entering $200 to $500 contributions for the 1992 election cycle is $38,000. Also included is $105,000 to upgrade the fire safety of the main computer room, and modernize and expand it to hold the increasing number of hardware items on site

Public Disclosure: 12.0 FTE which is similar staffing to the 1986 election cycle staffing levels. Disclosure will continue to make documents and final data available to the public in timely, understandable fashion, and will administer the State Access Program with participating State election offices.

Reports Analysis: 39.0 FTE reflecting attrition from peak levels in 1988-1989. The Division will be responsible for reviewing over 50,000 reports and statements, generating 6,000 Requests for Additional Information (RFAI's), and referring Committees for possible audit and/or investigation under the Commission's internal review and enforcement programs. RAD will also be responsible for the review of late and non-filers, to encourage the timely and correct filing of disclosure reports.

Clearinghouse: 5.0 FTE, codifying the fifth position filled during FY 1988-9, made possible by lapse in line offices' staffing during that period. Reflects restoration to a full base of $100,000 in contracts as opposed to the $32,000 in contracts neccessary in FY 1989 due to absorption of the four percent pay raise. The contracts include:

Voter Registration Requirements--compendia on state registration procedures, practices, and legal requirements $40,000

Case Law update--addition of newest federal and state appellate court rulings $25,000

Election Administration Video--training video on the ballot processing aspect of elections administration $15,000

Continuation of Clearinghouse Database Development--continued indexing and data entry of internal Clearinghouse data; projected to begin in FY 1989 $20,000

Also included is sufficient printing to conclude production and dissemination of previous contracts. This should conclude the publication of all the proposed Voting Systems Standards and any related documents. Finally, sufficient travel is included to hold the Advisory Panel meeting and to attend FEC state workshops.

IMPACT OF CAMPAIGN FINANCE LEGISLATION

The Budget Request submitted does not speak to the impact of future changes in the campaign finance legislation. The present atmosphere may be conducive to some significant changes in the FECA. However, until the details of any such changes are known with certainty, the Commission can not provide any estimate as to the potential impact on FEC programs, or as to the budgetary impact of any changes. Most likely any enacted changes with impact in FY 1991 will have to be dealt with in a programmatic supplemental appropriation request at that time.

IMPACT OF ETHICS LAWS LEGISLATION

The enactment of changes to the ethics laws in November 1989 came after the preparation of the Commission's FY 1991 budget request, and after agreement with the OMB as to the FY 1991 request. Therefore, the request submitted does not speak to the impact of those ethics laws changes. At this time, the Commission is still reviewing the new ethics laws, and conferring with the Office of Government Ethics and the appropriate oversight and Congressional Ethics Committees and offices.

The Commission, while cognizant of real impact on our operations due to the ethics amendments, can not at this time provide a hard estimate of the budgetary impact for inclusion in the FY 1991 request. Once we can be certain of any such impact, a supplemental appropriation request specific to this new legislative mandate will be submitted.

IMPACT OF VOTER REGISTRATION LEGISLATION

Another area where new legislation is likely is voter registration. As is the case for campaign finance legislation, no concrete congressional action had been taken as of the submission of this request to OMB and to Congress. However, it is now possible that some voter registration legislation will pass this term. Most likely there will be a grant program which the Commission will administer to provide state and local election offices the ability to implement the law. Any overhead costs will have to be analysed once the bill is enacted, and any necessary funds required will be covered in a supplemental appropriation request submitted after the bill is signed into law.

CONCLUSION

The Budget Request of $17,150,000 and 266 FTE reflects the need to provide adequate funding to enable the Commission to successfully carry out its responsibilities with regard to the Federal Election Campaign Act.

Failure to fund the FEC at the level contained in the President's Budget would disregard, without any effort to remedy, a serious material weakness in the Commission's ability to implement the public funding provisions of the FECA, meet statutory deadlines for timely and full public disclosure, and enforce the disclosure and limitation provisions of the FECA. The Commission urges adoption of the full Budget Request presented herein.

COMPARATIVE FTE LEVELS FY 1987-1991--OMB AGREEMENT

OFFICE	FY 1989 M PLAN ACTUAL*	FY 90 M PLAN PRELIM	FY 90 M PLAN LESS LAPSE	FY 91 C S INCREMENT (FROM FY 90)	FY 91 CURRENT SERVICES	FY 91 AGREE INCREMENT FROM C SERV	FY 91 OMB AGREE
COMMISSION	19.9	20.0	20.0	0.0	20.0	0.0	20.0
STAFF DIR	21.7	21.0	20.7	1.3	22.0	0.0	22.0
ADMIN	13.6	15.4	15.1	0.9	16.0	1.0	17.0
AUDIT	22.2	22.0	21.5	0.5	22.0	6.0	28.0
INFOR	13.2	13.0	12.7	0.3	13.0	0.0	13.0
C HOUSE	5.5	5.0	4.9	0.1	5.0	0.0	5.0
OGC	72.9	73.0	71.4	1.6	73.0	4.0	77.0
DATA SYS	31.1	30.2	29.5	0.5	30.0	1.0	31.0
DISCLOSURE	11.9	12.0	11.7	0.3	12.0	0.0	12.0
RAD	38.9	39.8	38.9	0.1	39.0	0.0	39.0
SUBTOTAL	**250.9**	**251.4**	**246.4**	**5.6**	**252.0**	**12.0**	**264.0**
OFFICE	0.4	1.6	1.6	0.4	2.0	0.0	2.0
TOTAL	**251.3**	**253.0**	**248.0**	**6.0**	**254.0**	**12.0**	**266.0**

*Reflects actual year to date as of September 30, 1989; below planned due to appropriated funds inadequate to support 264 FTE

COMPARISON OF OBJECT CLASS AMOUNTS

OBJECT CLASS ($000's)	FY 1987 12883	FY 1988 ACTUAL	FY 1989 ACTUAL	FY 1990 M PLAN	FY 1991 REQUEST
SALARIES & BENEFITS	8,667.3	9,705.1	10,401.0	10,857.5	11,743.0
OVERTIME	42.6	39.1	29.0	30.0	30.0
WITNESSES	4.3	2.5	2.2	5.0	7.0
CASH AWARDS	48.0	58.3	62.4	50.0	50.0
UNEMPLOYMENT	16.0	8.0	29.0	20.0	25.0
DISABILITY	0.0	7.2	3.6	0.0	[illegible]
TOTAL PERSONNEL	**8,778.2**	**9,820.7**	**10,527.2**	**10,962.5**	**11,857.0**
TRAVEL	98.8	202.6	208.8	144.0	205.0
MOTOR POOL	5.3	7.0	8.7	6.0	7.0
TRANS. OF THINGS	3.5	5.4	6.1	5.0	[illegible]
GSA SPACE	1535.2	1617.0	1640.0	1471.5	[illegible]
COMMERCIAL SPACE	16.2	17.4	19.7	20.0	21.0
EQUIPMENT RENTAL	235.4	260.0	263.4	387.2	[illegible]
PRINTING	263.2	266.4	224.0	315.0	[illegible]
MICROFILM PRINTS	25.4	28.7	29.2	35.0	[illegible]
TRAINING	[illegible]	33.6	85.2	44.0	[illegible]
ADMIN. EXPENSES	84.9	116.8	117.7	[illegible]	[illegible]
SUPPORT CONTRACTS	[illegible]	754.4	816.3	[illegible]	[illegible]
SUPPLIES & MATERIALS	[illegible]	188.7	228.1	[illegible]	[illegible]
PUBLICATIONS	99.9	124.5	[illegible]	[illegible]	[illegible]
TELEPHONE - LOCAL	[illegible]	100.3	[illegible]	[illegible]	[illegible]
LONG DISTANCE TOLLS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TELEGRAPH	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
POSTAGE	[illegible]	146.7	[illegible]	[illegible]	[illegible]
TELEPHONE INTERCITY	54.6	170.4	[illegible]	[illegible]	[illegible]
RECURRING SERVICES	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NON-RECURRING SERVICES	4.1	[illegible]	[illegible]	[illegible]	[illegible]
EQUIPMENT PURCHASES	164.9	205.2	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]			
TOTAL NON PERSONNEL	**4,104.8**	**4,353.8**	**5,155.8**	**4,367.5**	**5,288.0**
REPRESENTATIONAL FUNDS					
TOTAL COMMISSION	**12,883.0**	**14,174.0**	**15,683.0**	**15,330.0**	**17,150.0**

FY 1991 BUDGET [illegible]

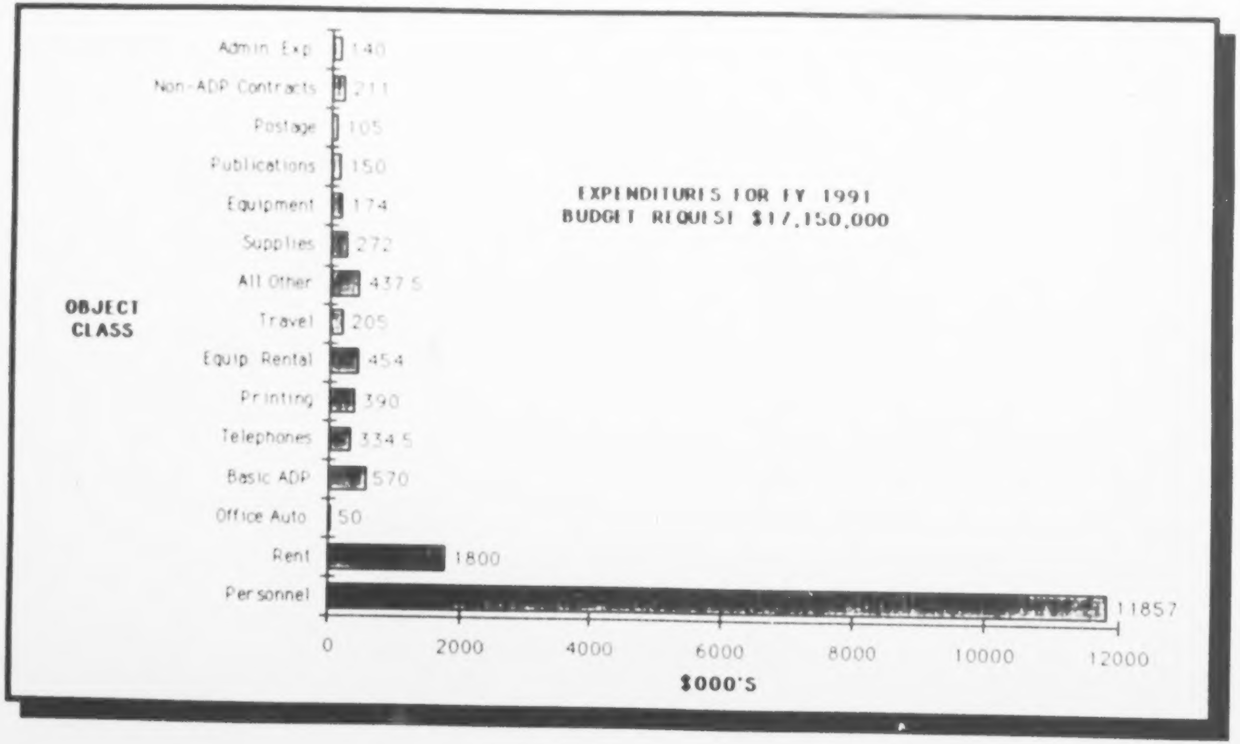
$ IN 000's 1/17/90 OFFICE	STAFF YEARS	PERSONNEL	FY 1991 TRAVEL	BUDGET $17,350K TRAINING	BASE LEVEL PRINTING	PUBLICATIONS	ADMIN EXPENSES	SUPPORT CONTRACTS
COMMISSION	20.0	1,431.5	20.0	[illegible]	[illegible]	1.0	8.3	0.0
STAFF DIR	22.0	1,066.0	22.0	[illegible]	15.0	[illegible]	30.0	0.0
ADMIN	17.0	552.0	2.0	[illegible]	76.0	[illegible]	80.0	0.0
AUDIT	28.0	1,271.0	50.0	20.0	[illegible]	[illegible]	[illegible]	0.0
INFOR	13.0	515.0	20.0	5.0	45.0	2.0	10.0	111.0
C HOUSE	5.0	241.0	5.0	2.0	10.0	[illegible]	1.0	100.0
O G C	77.0	3,585.0	45.0	10.0	20.0	105.0	10.5	0.0
DATA SYS	31.0	1,057.5	3.0	5.0	15.0	5.0	3.0	0.0
DISCLOSURE	12.0	393.0	5.0	1.0	5.0	2.0	1.2	0.0
RAD	39.0	1,228.0	1.5	1.5	0.0	1.5	1.0	0.0
I G	2.0	98.0	2.0	[illegible]	1.0	0.5	1.2	0.0
SUBTOTAL	**266.0**	**11,438.0**	**205.0**	**110.0**	**390.0**	**150.0**	**140.0**	**211.0**
91 COLA		150.0						
Witnesses		7.0						
Overtime		30.0						
Cash Award		50.0						
FERS/TSP		100.0						
Merit Pay		55.0						
Unemploy		25.0						
Disability		2.0						
TOTALS	**266.0**	**11,857.0**	**205.0**	**110.0**	**390.0**	**150.0**	**140.0**	**211.0**

FEDERAL ELECTION COMMISSION [illegible] JANUARY 17, 1990

FY 1991 BUDGET [illegible]

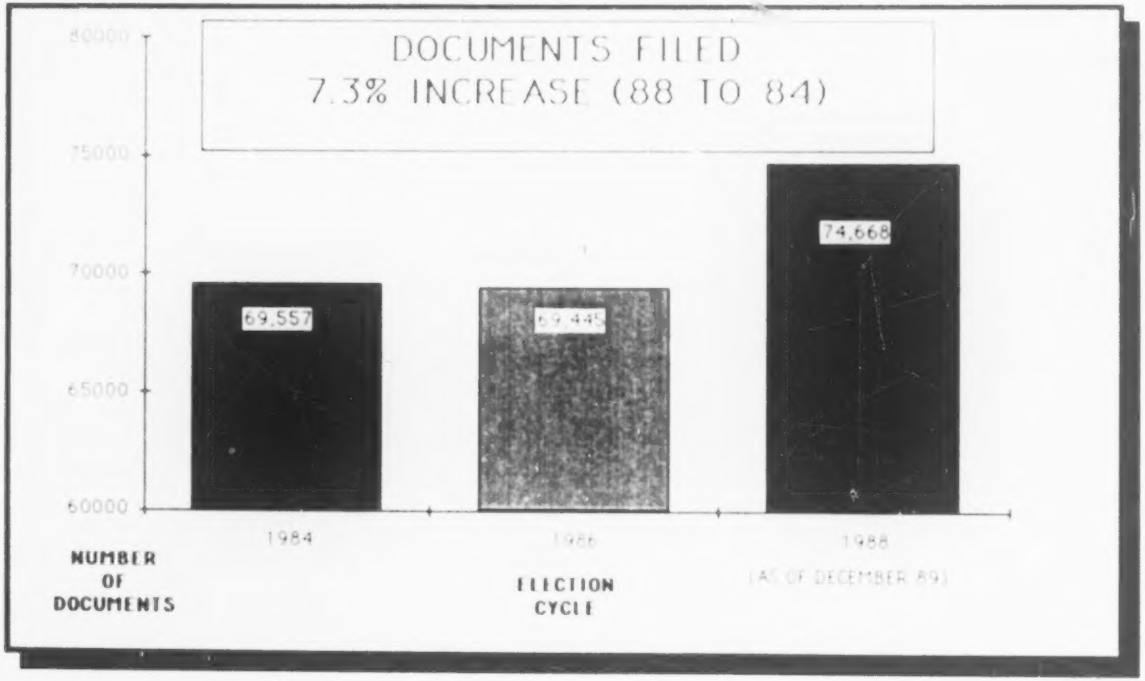
$ IN 000's 1/17/90 OFFICE	MICROFILM PRINTS	ADP	FY 1991 DATA ENTRY	BUDGET $ [illegible] MAIL [illegible]	BASE LEVEL COMM SPACE	TRANS OF THINGS	OTHER SEE NEXT PG	$ IN 000's TOTALS
COMMISSION	0.0	0.0	0.0	0.0	[illegible]	[illegible]	[illegible]	1,462.8
STAFF DIR	5.0	0.0	0.0	[illegible]	[illegible]	[illegible]	[illegible]	1,197.0
ADMIN	0.0	0.0	0.0	[illegible]	21.0	[illegible]	[illegible]	5,444.4
AUDIT	0.0	0.0	0.0	[illegible]	[illegible]	[illegible]	[illegible]	1,343.0
INFOR	0.0	0.0	0.0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
C HOUSE	0.0	0.0	0.0	[illegible]	[illegible]	[illegible]	[illegible]	425.0
O G C	0.0	0.0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1,800.5
DATA SYS	0.0	620.0	62.0	[illegible]	[illegible]	[illegible]	[illegible]	1,888.5
DISCLOSURE	35.0	0.0	0.0	0.0	[illegible]	[illegible]	0.0	445.0
RAD	0.0	0.0	0.0	2.0	[illegible]	[illegible]	0.0	1,238.5
I G	0.0	0.0	0.0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SUBTOTAL	**40.0**	**620.0**	**62.0**	**7.0**	**21.0**	**6.0**	**5,336.0**	**16,731.0**
91 COLA								150.0
Witnesses								7.0
Overtime								30.0
Cash Award								62.0
FERS/TSP								100.0
Merit Pay								55.0
Unemploy								25.0
Disability								[illegible]
TOTALS	**40.0**	**620.0**	**62.0**	**7.0**	**21.0**	**6.0**	**5,336.0**	**17,150.0**

FY 91 BUDGET BASE	($17,150K)	$ IN 000'S	
OTHER COSTS	ADMIN DIVISION	IG OFFICE	COMM TOTALS
MOTOR POOL	7.5	0.0	7.5
GSA SPACE RENTAL	1,787.5	12.5	1,800.0
EQUIPMENT RENTAL	453.0	1.0	454.0
SUPPLIES & MATERIALS	270.5	1.5	272.0
TELEPHONE-LOCAL	134.3	0.7	135.0
LONG DISTANCE TOLLS	2.0	0.5	2.5
TELEPHONE-INTERCITY	193.8	1.2	195.0
POSTAGE	104.5	0.5	105.0
RECURRING SERVICES	64.0	1.0	65.0
NON-RECURRING SERVICES	14.5	1.5	16.0
EQUIPMENT PURCHASES	171.0	3.0	174.0
TOTAL	**3,202.6**	**23.4**	**3,226.0**



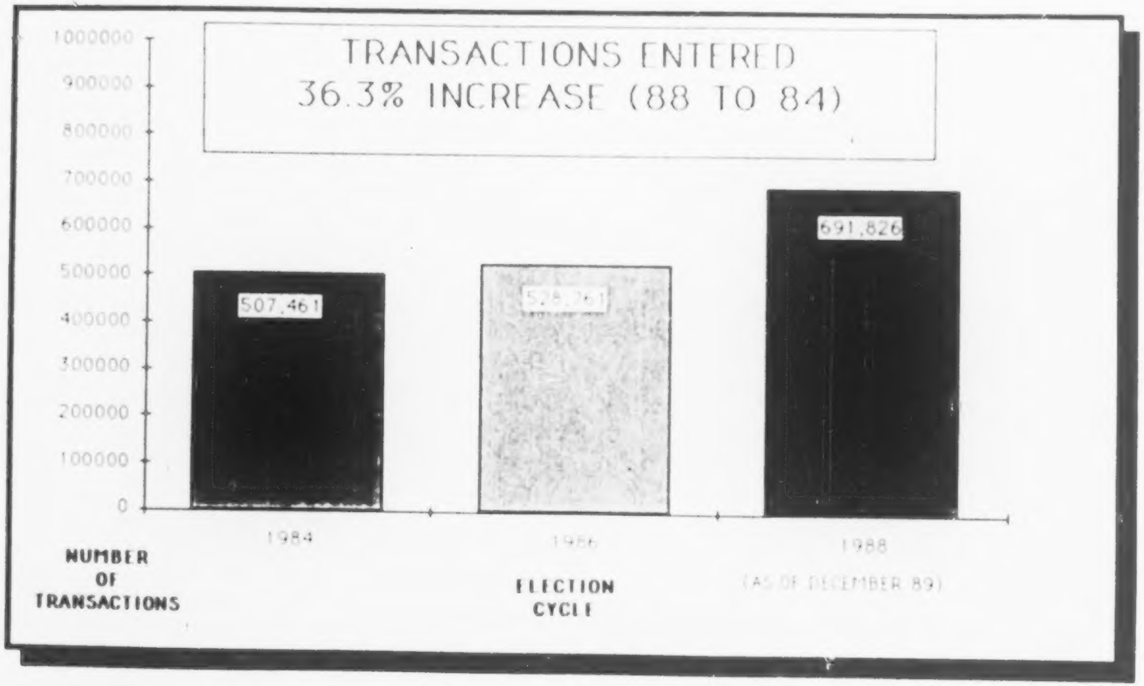
EXPENDITURES BY OBJECT CLASS FY 1991 1/17/90

[illegible]



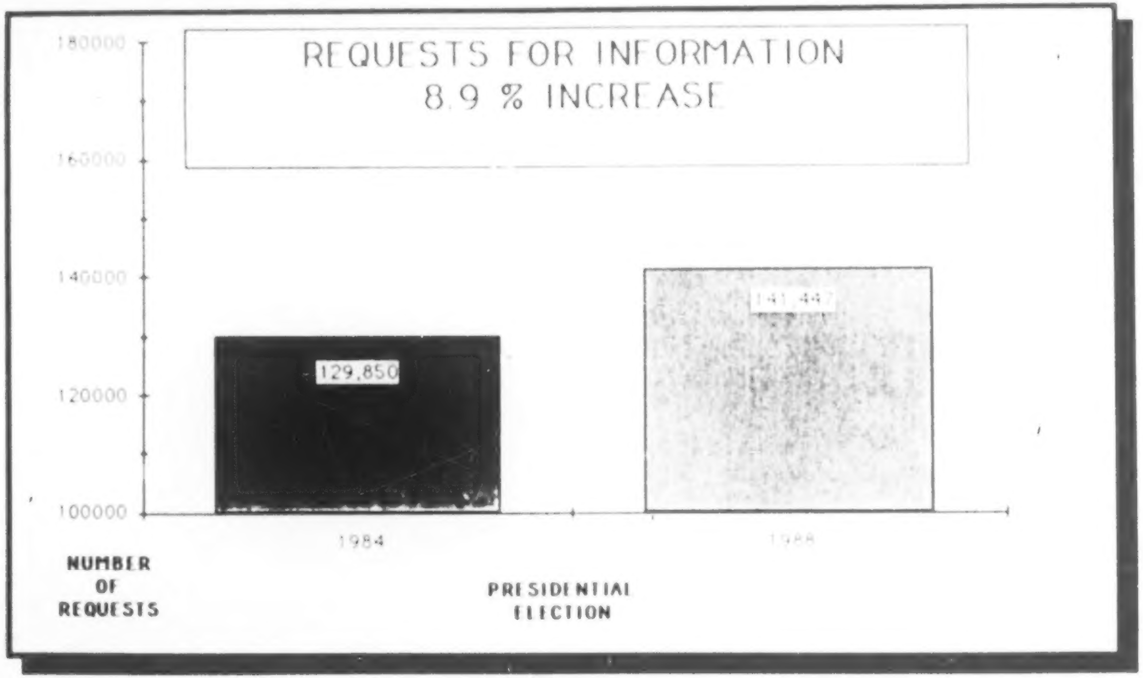
COMPARISON OF NUMBER OF DOCUMENTS FILED BY ELECTION CYCLE

FEC FY 1991 BUDGET REQUEST: TRANSACTIONS ENTERED IN DATA BASE



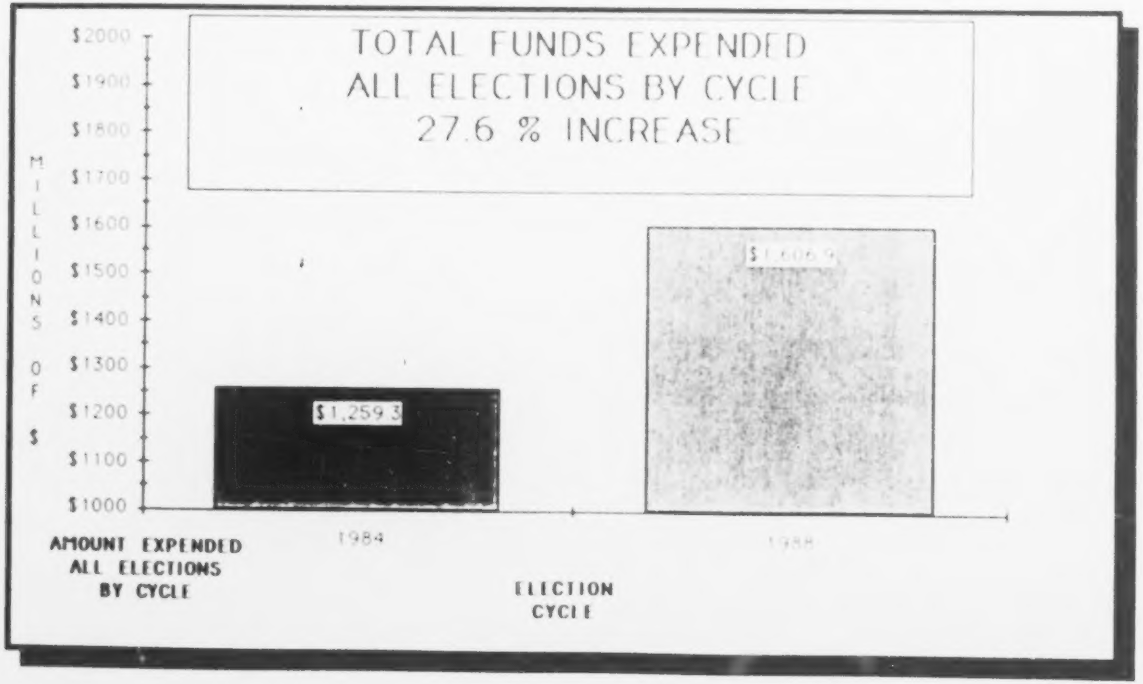
COMPARISON OF NUMBER OF TRANSACTIONS ENTERED BY ELECTION CYCLE

FEC FY 1991 BUDGET REQUEST: REQUESTS FOR INFORMATION

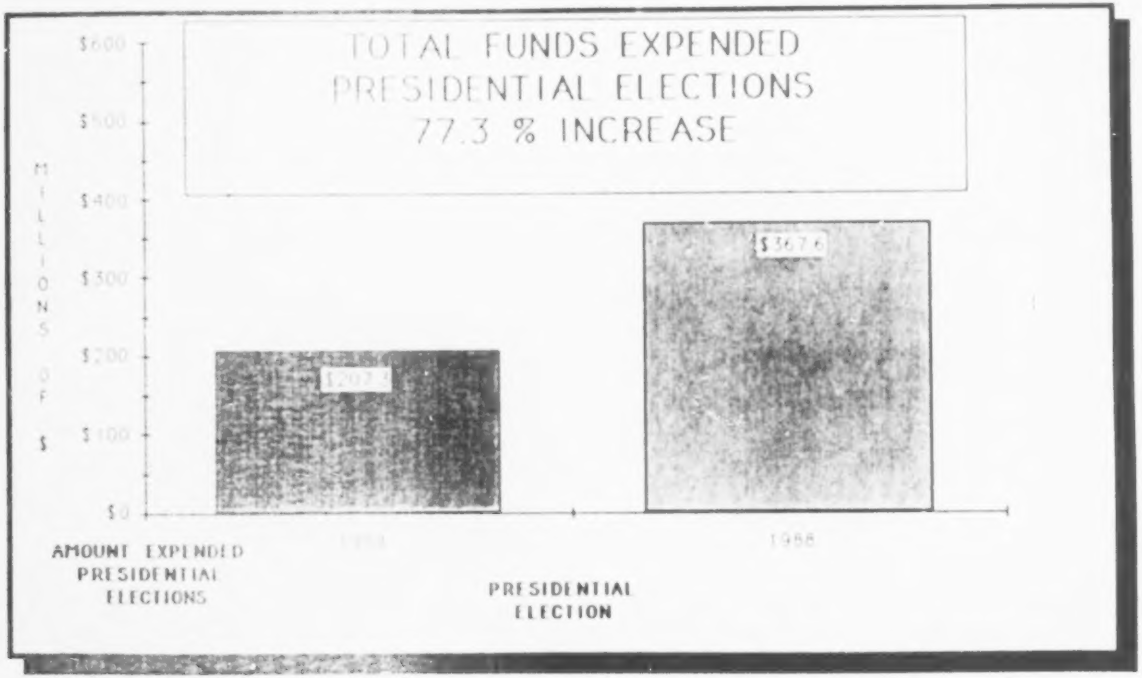


COMPARISON OF NUMBER OF REQUESTS BY PRESIDENTIAL ELECTION

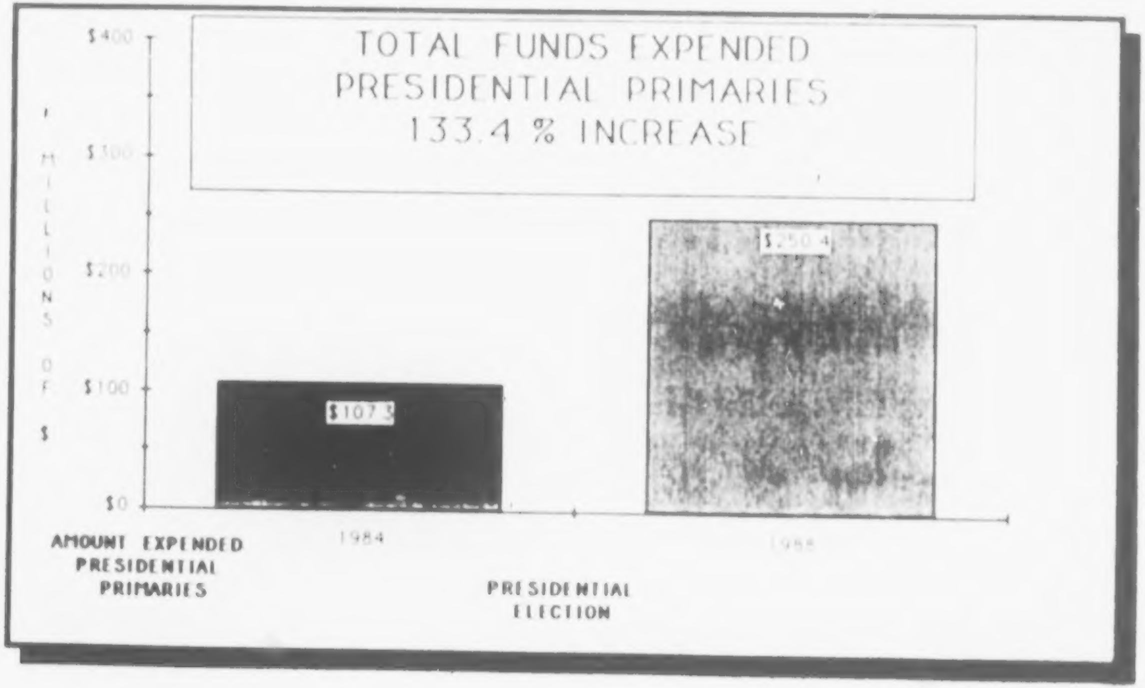
FEC FY 1991 BUDGET REQUEST — EXPENDITURES IN ALL ELECTIONS



COMPARISON OF AMOUNT EXPENDED BY ELECTION CYCLE [illegible] REQUEST- EXPENDITURES IN ELECTIONS

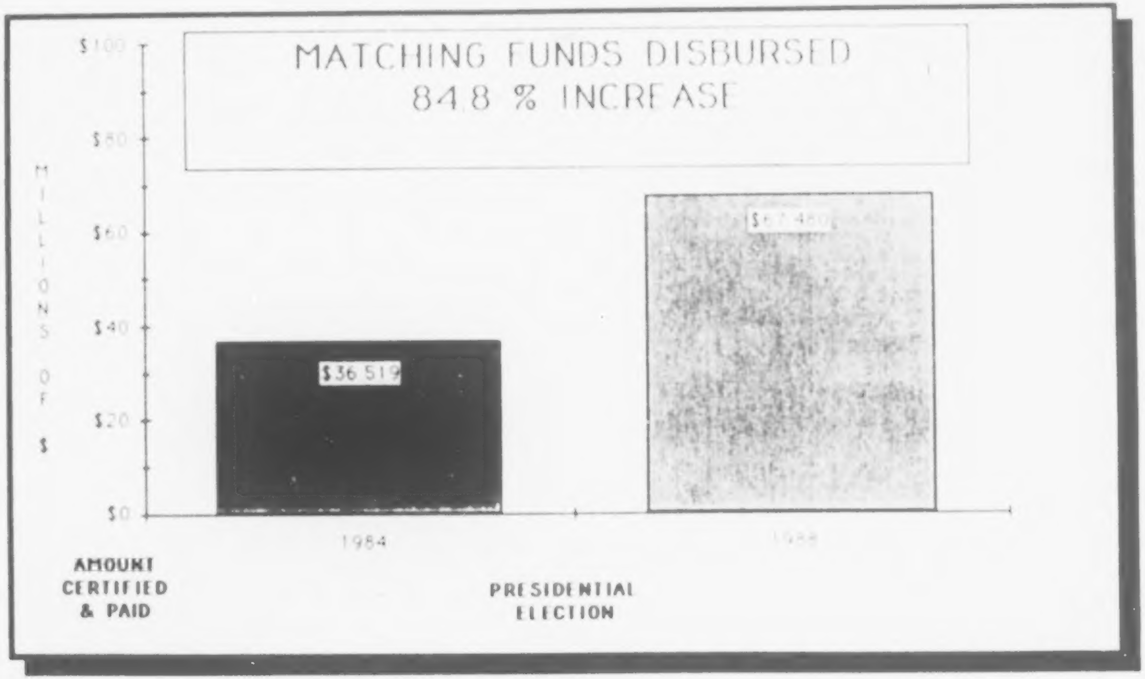


[illegible] AMOUNT EXPENDED BY PRESIDENTIAL ELECTION



COMPARISON OF AMOUNT EXPENDED BY PRESIDENTIAL ELECTION

[illegible]



COMPARISON OF AMOUNT MATCHED AND DISBURSED BY ELECTION

Thursday, March 22, 1990.

THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

WITNESSES

DAVID E. NETHING, STATE LEGISLATOR, MEMBER OF THE COMMISSION
JOHN KINCAID, EXECUTIVE DIRECTOR
FRANKLIN A. STEINKO, JR., BUDGET AND MANAGEMENT OFFICER

Mr. Akaka. Welcome to the subcommittee. We look forward to your testimony, and you may present it as briefly as you want to. And we will enter your full testimony in the record.

Mr. Nething. Thank you very much, sir. It is a pleasure for me to be here. I would like to introduce the Executive Director of ACIR, Mr. John Kincaid, on my left; and on my right, Lin Steinko, who is our Budget and Management Officer.

FEDERALISM OVERVIEW

I am just going to give an overview somewhat rapidly, knowing of your time constraints, of what my remarks contain. I am here because I have a commitment to intergovernmental cooperation. I sincerely believe that is what is going to make our entire federalism system work. That cooperation is the real key.

There are certain issues that are of intergovernmental importance. They are important to me as a state legislator, and they are important to you as members of Congress. As I tick off six or seven of them, I think you will see the familiarity—economic development, international competitiveness—it is important to us—, banking, telecommunications; transportation—a major issue in this country—environmental protection—which you have been working on recently—criminal justice, agriculture and rural development, finance and domestic programs. I think every single one of those is just as important to us, in state legislatures, in state government as it is to you in Congress.

I should mention that in my other life I am the city attorney in a small community of 16,000 people. It is interesting, as I think about things we have discussed here, that at our last council meeting we ended up talking about some of those same things and that is just how it moved down. And that is why ACIR is important—because it gives us the vantage point as an independent bipartisan commission to represent the Federal interest, the state interest and the local governments.

COOPERATIVE PROJECTS

What we do at ACIR is to identify the issues that need attention; we conduct hearings and research; we provide information, and we make recommendations to our intergovernmental family. ACIR is well known for its balanced and objective approach to these issues.

Let me talk a little bit about some of the cooperative services that we have and, again, these I mention in more detail in my comments that have been submitted. But we work with 27 state ACIRs, we work with state tax study commissions, and we work with other state and local agencies and organizations.

We are in the process of working on the Criminal Justice Project that the National Association of Counties was interested in, as well as the Department of Justice. And that was an outgrowth of a study we did back in 1975 relating to jails. It is interesting that we have come some 15 years and we are still having problems in that particular area.

Another area we work in is local revenue diversification for rural communities with the Department of Agriculture.

We designed a national clearing house on state and local initiatives on productivity, technology and innovation for the Department of Commerce.

RESEARCH PROGRAM

Let me just highlight some of our research programs. We have a regular statistical service such as "Significant Features of Fiscal Federalism." We publish an "Intergovernmental Perspective" magazine for public officials and private citizens. And I hope you do get a chance to look through that—it is our 30th anniversary—and there are very many interesting comments that folks from the intergovernmental family have submitted about how they view ACIR.

We do an annual public opinion poll with the Gallup organization. We are doing research reports on a regular basis, one, for example, we have done on state constitutional law. This, by the way, has found an awful lot of interest recently, particularly with law schools throughout the country, because there was never such a publication available to them. And so we have had a heavy demand in this particular area.

We have done research on taxation and regulation of banking and telecommunications, and we did that through an effort with the other groups, not by ourselves alone but we did it with other groups through a conference setting, and we bring in experts in the area to talk about their perspectives on it.

We are doing a report on Federal and state compliance with disability rights mandates, we are doing a report on Federal preemption of state and local authority, and we are doing one on state and local governments in international economic competition.

Some of those things that I highlighted at the beginning you can see how they are merged into not only our interests but your interests also. This is kind of an overview of what we have done as we work through our research program.

COST-CUTTING COMPLIANCE

Let me talk a little bit about our compliance with the Congressional cost-cutting directives that were made last year, for Fiscal Year 1990. We have been successful in raising external revenue. State contributions, for example, increased from $111,550 in Fiscal

Year 1988 to $182,250 in Fiscal Year 1990. In addition to your costcutting suggestions, we have cut staff and office space and other costs. On the other hand, we have maintained a high level of productivity, and we have a graph here that I think will help emphasize that.

Maybe I could just mention that the upper portion of the graph shows the history of dollars, and you can see here in 1989 the amount we had. And yet, as you look at our productivity for that same year on the bottom graph, for 1989, we had our fifth highest year of productivity ever. I think our management at ACIR has really worked in cooperation with what you folks had suggested we should do.

FY 1991 REQUEST

I will talk just briefly about President Bush's Fiscal Year 1991 request for us. Our budget request for this year is $1,300,000. I want to reiterate that we have kept our promise to this Committee not to request more in Fiscal Year 1991 than was appropriated in 1990. If Congress will provide the requested foundation of $1,300,000, the Commission is prepared to raise the additional revenue needed to maintain an effective operation.

We are a creature of Congress. In 1959, ACIR was organized, and I think the work that we have done and the work that we are doing today merits the continued base support of $1,300,000.

Let me say in conclusion that I think that ACIR is as important as ever and in fact we are now seeing the demand for our services grow. As we look at what is happening in our federalism system, at what is taking place with the states, with the local governments, you folks, from your perspective, can see the value of having a bipartisan organization that produces the kind of research and information that ACIR does.

I am pleased to be here to testify on behalf of ACIR. I have been a member since I was first appointed in 1982. We have seen a lot of things change during that time. We, at one point, had a rather substantial appropriation of over $2 million. Frankly, we were probably like some other agencies in the sense that we might have been what we call at the state legislature "a little bit fat." But now we are lean, and we are productive and I think we are meeting the mission that you folks wanted us to meet.

So with that I will conclude and be happy to try to answer any questions. And if there are questions I can not answer, then I will let staff do it.

[The information follows:]

Testimony of
David E. Nething, Member
U.S. Advisory Commission on Intergovernmental Relations

before the

House Appropriations Subcommittee on Treasury, Postal Service, and General Government

March 22, 1990

Thank you, Mr. Chairman. My name is David E. Nething. I am one of three state legislator members of the Advisory Commission on Intergovernmental Relations (ACIR). I am a former Majority Leader of the North Dakota Senate and past President of the National Conference of State Legislatures. I am very pleased to be here to discuss the work of ACIR and President Bush's FY 1991 budget request for ACIR. On behalf of the Commission, I would like to thank the Committee for meeting ACIR's request for base support in FY 1990. As our appropriation request indicates, ACIR has fulfilled its promise made to the Committee last year to request no more for FY 1991 than the Committee appropriated in FY 1990, absent an executive pay increase.

I would like to make four brief points about the work of the Commission, which is a very vital and productive agency. I would especially like to emphasize ACIR's ability to diversify its revenue sources in compliance with Congressional requests, so as to compensate for reduced appropriations. Given the budget constraints we face in North Dakota, I can certainly appreciate your position. As a member of ACIR, I can confidently report on how well the Commission has responded to budget austerity.

ACIR's Unique Vantage Point

My first point is the unique vantage point occupied by ACIR in our 201-year-old federal system. As an independent bipartisan commission made up of members of the general public, members of Congress, officers of the U.S. executive branch, governors, mayors, state legislators, and elected county officials, ACIR is uniquely qualified to address the many issues which arise each year in the intergovernmental family. Private citizens and public officials from around the country look to ACIR as the one national, intergovernmental forum where federal, state, and local government representatives can meet as equals to examine issues, reconcile differences, and promote cooperation. America faces significant challenges in domestic policy and international competitiveness which will require better intergovernmental cooperation and coordination if we are to achieve success.

ACIR is looked to for balanced and objective analyses of policy issues and fiscal developments. This analytic role is acknowledged, for example, by the state, local, and federal agencies and other organizations that request assistance from us. For example, the American Public Works Association, acting entirely on its own, has recommended to Congress that ACIR be authorized to serve as a public works coordination council for research and development. The Commission has not acted on this idea at this time, but I mention it as one example of how other people and organizations view ACIR.

We also are looked to for pioneering work on the frontiers of federalism. Most recently, for example, this role was recognized by U.S. Supreme Court Justice William J. Brennan, Jr., who commended the ACIR for its 1988 publication of a major collection of cases and materials on state constitutional law. This report is being reprinted with a supplementary update in order to meet demands from law schools around the country that have started to teach state constitutional law. Very shortly, we will issue a major report on state expenditure patterns containing a new methodology for determining workload measures for state spending. These measures could be used in federal grant programs in conjunction with ACIR's Representative Revenue System estimates.

ACIR's Multifaceted Service Role

My second point concerns the many services, intergovernmental links, and public-private connections promoted by ACIR. In FY 1989, for example, ACIR played the principal role in helping the U.S.

Department of Commerce develop the national Clearinghouse on State and Local Initiatives in Productivity, Technology, and Innovation, which was mandated by the *Omnibus Trade and Competitiveness Act of 1988*. The ACIR design builds upon existing public and private resources and intergovernmental links. Just last week, the U.S. Army Corps of Engineers requested ACIR assistance on infrastructure research. ACIR co-sponsored two national conferences with the National Conference of State Legislatures (NCSL) last year, one on the taxation and regulation of telecommunications and one on banking taxation and regulation. ACIR has also been working with the U.S. Department of Agriculture to highlight, as appropriate, the rural and farm implications of issues examined by ACIR.

Equally important is ACIR's close working relationship with ACIR-counterpart organizations active in 27 states. In addition, we provide technical assistance to states that are considering establishing a state ACIR or are setting one up. Most recently, ACIR has worked closely with NCSL's Committee on State-Local Relations, the Council of State Government's Intergovernmental Affairs Committee, and the Intergovernmental Partnership Task Force. During the current fiscal year, ACIR has provided research advice for major state-local tax studies in Hawaii, Maryland, and South Carolina. The National Association of Counties has recommended, and the U.S. Department of Justice has agreed to provide partial funding for, ACIR to undertake a substantial study of intergovernmental relations and the role of general-purpose governments in the administration of justice. This project will be a follow up to ACIR's now "classic" 1975 study of the subject.

These are just some of ACIR's important service activities and potentials. Even where we are not the direct service provider, ACIR responds to hundreds of inquiries each month from the Congress, other public officials, private citizens, academic institutions, businesses, and the news media—all wanting ACIR materials, referrals to sources of information, or leads to public and private technical-assistance experts. Also, members of Congress, the USIA, and other agencies refer many foreign officials to ACIR, especially from Africa, Asia, the USSR, the European Economic Community, and now Eastern Europe—wherever there is interest in decentralization, local liberty, intergovernmental cooperation, or federated union.

ACIR's Substantive Research Program

My third point goes to the heart of ACIR's capabilities—the Commission's research program. Since 1959, the Commission has published 346 reports. Almost one-third of these have been policy reports containing several hundred recommendations to the federal, state, and local governments. Over the years, a number of ACIR reports were initiated or supported by the Congress, the White House, or executive agencies. In addition, many Commission recommendations have been included in either proposed or enacted federal, state, and local legislation.

Despite a 58 percent decline in 1982 constant-dollar appropriations and a 38 percent reduction in staff since FY 1985, ACIR has maintained a robust program of intergovernmental relations research and conferences (see Appendix A on p. 6). Indeed, FY 1989 was the fifth most productive year overall in ACIR's 29-year history (see Appendix B on p. 20) and the single most productive year per employee in ACIR's history.

The Commission's research program falls into three general categories: (1) Continual Monitoring and Information Dissemination; (2) Microcomputer Data Services; and (3) Topical Research on Current Intergovernmental Issues. The current research program is summarized in Appendix A of this testimony. Let me highlight major features of ACIR's research.

Under Category I, Continual Monitoring and Information Dissemination, ACIR publishes:

- An annual two-volume compilation of government finance data called *Significant Features of Fiscal Federalism*, which is widely used in both the public and private sectors;
- A biennial report measuring *State Fiscal Capacity and Effort*, which is used by many state legislators and tax commissioners, and which can be used to target federal aid as suggested in several pieces of pending Congressional legislation;
- An annual public opinion poll relevant to intergovernmental relations and current ACIR research;
- A periodic *Catalog of Federal Grant-in-Aid Programs to State and Local Governments*, and
- A quarterly magazine called *Intergovernmental Perspective* that reaches more than 20,000 readers and which doubles as an advertising vehicle for ACIR publications.

ACIR produces computer diskettes on (1) state-local government finances and (2) state government tax revenue. Public officials, researchers, and interested citizens can analyze the data easily for their own purposes because the diskettes take full advantage of the computational power and popularity of Lotus 1-2-3 and Symphony software. The majority of diskette requests come from state and local governments.

Under Category II, Topical Research on Current Intergovernmental Issues, ACIR published four policy reports and 12 informational reports in FY 1989. Thus far in FY 1990, ACIR has published three informational reports. ACIR currently has 29 topical research and conference projects under way, plus five regular monitoring activities, and two microcomputer diskette series. These projects are conducted directly or managed through contractors by seven professional staff members and one professional temporarily on detail from the U.S. Treasury Department. By increasing our use of contractors in recent years, and by providing careful in-house supervision, we have introduced significant economies into the research process while preserving and enhancing ACIR's record of quality work. I believe it would be difficult to find many other federal agencies that produce so much of such high quality on so many diverse topics, per employee and per dollar, as does the Advisory Commission on Intergovernmental Relations. Added to this are the many telephone and mail inquiries, administrative duties, speeches, conference appearances, and marketing activities handled by the research staff.

ACIR's Compliance with Congressional Cost-Sharing Directives and Appropriations Reductions

My fourth point is that ACIR has conscientiously complied with Congressional directives to raise revenue from state contributions and sales of publications and services to compensate for appropriations reductions from $2,148,000 in FY 1985 to $1,300,000 in FY 1990. This decline stands in stark contrast to the growth in many other federal agency appropriations, the rate of inflation, and annual GNP growth.

In FY 1989, ACIR realized $182,250 from state contributions, $73,347 from sales of publications and diskettes, and $289,160 from contracts, administrative services, and other income. As of February 28, 1990, the Commission had realized $116,300 from state contributions (with a goal of $150,000), $28,442 from sales of publications and diskettes (with a goal of $60,000), and $63,250 from contracts, administrative services, and other income. The latter amount includes $54,000 from a single-year research contract, an award that cannot be repeated every year.

We will continue these cost-sharing activities by soliciting increased contributions from the states, selling publications and services, stepping up efforts to secure external research grants, and continuing the kinds of productivity improvements reported in previous testimony. To cut costs, we have purchased all leased equipment, cut the number of full-time employees from 27 to 15 over the last five years, reduced leased office space from 14,600 square feet in FY 1982 to 8,401 square feet today, purchased labor-saving and cost-reducing equipment, and drastically reduced the number of publications distributed free of charge.

President Bush's FY 1991 Request for the ACIR

These activities show the Commission has made excellent progress in complying with the Congress' cost-sharing directives and tightened appropriations. At the same time, it should be noted ACIR's appropriations since FY 1985 have fallen below what would have been provided under Gramm-Rudman-Hollings cuts. Although President Bush's FY 1991 request is the same as ACIR's FY 1990 appropriation, our FY 1991 request is still $78,000 less than our FY 1988 appropriation, $450,000 less than our FY 1987 appropriation, and $653,000 (or 33 percent) less than our FY 1986 appropriation. During this time, ACIR also has absorbed all governmentwide pay increases as well as other required service cost increases.

President Bush's budget request of $1,300,000 for FY 1991 represents, as we stated in our testimony last year, a base level of Congressional support essential for maintaining the mission and viability of the Commission. We are not, therefore, requesting an appropriation increase for FY 1991. We expect other sources of revenue to supplement the requested appropriation sufficiently to meet ACIR's needs.

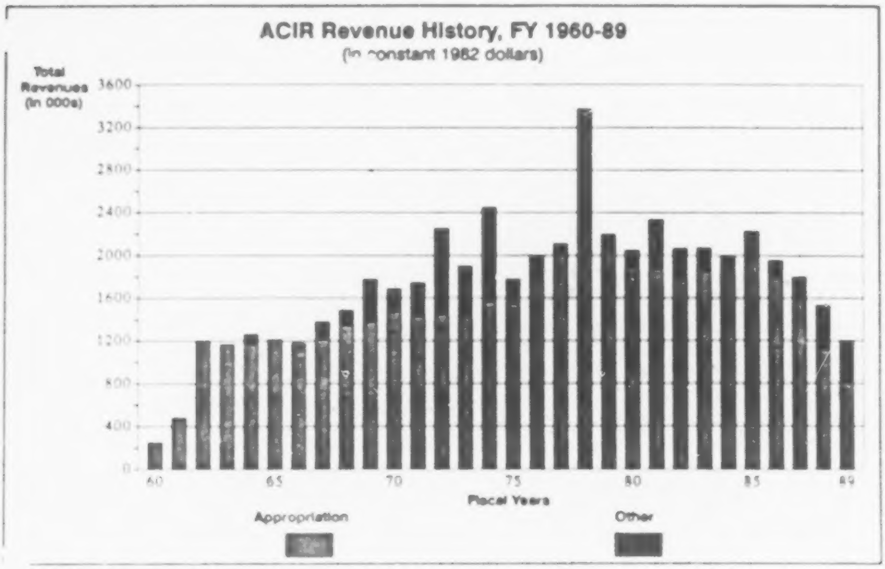
FY 1990 marks the second year in the Commission's history that the portion of ACIR's Congressional appropriation totally under agency control, referred to as discretionary, will be $0. In the long term, however, ACIR's self-generated income cannot compensate for both reductions in Congressional appropriations and concomitant increases in nondiscretionary costs. ACIR's high level of efficient productivity cannot be maintained if there are further reductions in staff or space. Given that ACIR's research must cover fiscal, economic, institutional, historical, and legal issues in diverse intergovernmental matters, the Commission needs a minimum mix of expert staff analysts to conduct research, supervise contract research, and respond to inquiries.

Conclusion

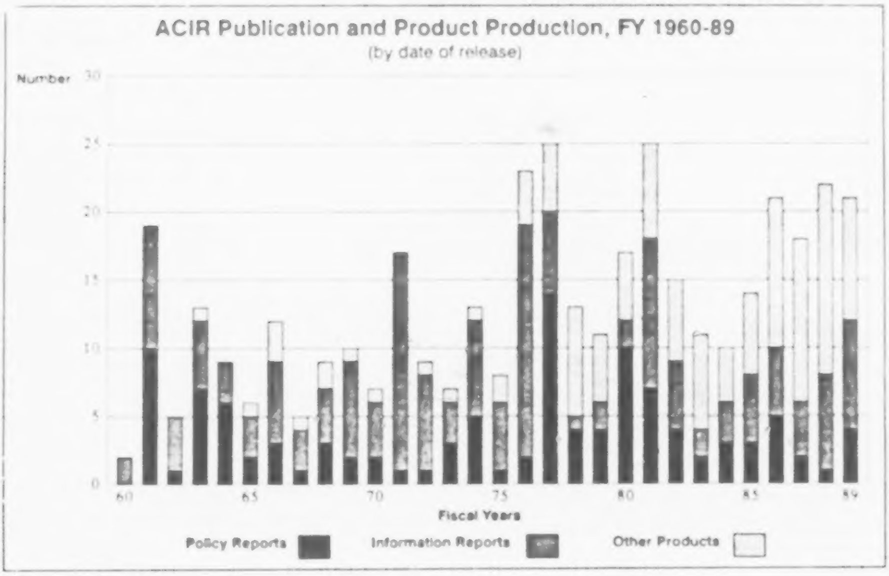
During the 1980s, ACIR was a cooperative partner in Congressional and Administration efforts to reduce spending and promote efficiency and quality in the federal government. We believe the Commission has behaved in an exemplary fashion by reducing spending, generating outside revenue, increasing productivity, and improving quality. I believe it is fair to say that ACIR has already implemented many of the practices now being called Total Quality Management. Therefore, I urge you to appropriate $1,300,000 for ACIR in FY 1991. This request represents a necessary and realistic level of Congressional support in FY 1991 that takes into account both (1) the desire of the Congress to have the Commission raise additional revenue from other sources and (2) the ability of the Commission to raise such revenue at a level and in a manner that does not injure the Commission's ability to fulfill its Congressionally established intergovernmental mission. This appropriation will enable ACIR to maintain its high rate of productivity, high quality research and public service program, and respected forum for airing and resolving issues in our federal system. The need for ACIR is as great as it has ever been because the need for a strong, equitable, and efficient federal system in America is as great as ever.

I have really enjoyed serving on the Commission. The members and staff are a fine group of people, and they do excellent work.

Thank you for this opportunity to describe our mission and our commitment to you. I will be happy to answer any questions.



ACIR Revenue History, FY 1960-89
(in constant 1982 dollars)



ACIR Publication and Product Production, FY 1960-89
(by date of release)

Mr. **Akaka**. Thank you very much, Mr. Nething, for your testimony. I see where you are asking for an increase of $214,000.

Mr. **Nething**. No. We are asking for the same appropriation we had last year.

Mr. **Skeen**. Pre-sequestration.

Mr. **Akaka**. Yes. Sequestration is $15,000.

OUTSIDE INCOME

Mr. **Skeen**. To what extent have you been able to increase revenues from sales of documents and donations from state and local government?

Mr. **Nething**. I have those somewhat set out in my report. In Fiscal Year 1989 we realized $182,250 from state contributions; $73,347 from sales of publications; and $289,160 from contracts and administrative services. As of February 28th of this year, the Commission had realized $116,300 from contributions—our goal is $150,000. We have realized to this point $28,442 from the sales of publications with a goal of $60,000. And we have also realized $63,250 from contracts and administrative services.

So I think that we have put ourselves into a trend. I think one of the big things is we are getting good cooperation from the states. We will be able to reach the goal that we have set. I think that many of the states are finding themselves with the same kind of problems that you have here in the fiscal area, but at the same time they are recognizing the value of ACIR and, as such, have been willing to come in and participate more.

Several years ago, we did not do that. We relied totally on you. And I think it is a much better change because I think the states should be a part of the financial aspect of ACIR.

Mr. **Akaka**. Mr. Steinko?

Mr. **Steinko**. If the program goes as expected this year, we should have a record number of state contributors and a record dollar volume.

Mr. **Akaka**. I understand the lowest contribution is about $1,000, is that correct?

Mr. **Steinko**. The lowest contribution?

Mr. **Akaka**. Yes.

Mr. **Steinko**. The lowest contribution now is about $3,000. Some states do not meet the full contribution.

Mr. **Akaka**. That was in 1989, I guess?

Mr. **Steinko**. Correct. In 1989, at the direction of the Committee, we increased the amount we were requesting.

Mr. **Akaka**. Is there a formula that you use with the states?

Mr. **Steinko**. It is based on population.

Mr. **Akaka**. I see where Hawaii benefitted from your tax studies. What type of assistance did ACIR provide to the State of Hawaii?

Mr. **Nething**. John?

Mr. **Kincaid**. The State Constitution calls for a tax review commission every five years in the State. So we worked with the Tax Review Commission on providing a portion of the study they did. We looked at state/local fiscal relations and the structure of the financing between the state and the counties and provided a rather thorough report for that aspect of their work.

Mr. **Akaka**. I am impressed with the idea of you meeting as equals, as a nonpartisan clearing house. These are the best descriptive words, I think, for your agency. I would even say, after hearing your testimony, that your work is very essential.

Mr. **Nething**. Thank you.

Mr. **Akaka**. Mr. Skeen.

SEQUESTRATION

Mr. **Skeen**. Thank you, Mr. Chairman. What kind of an adverse effect did the sequestration have on your efforts to get your reports out? Any noticeable?

Mr. **Steinko**. That would depend on this year's revenues. It would mean outside revenues covering the $15,000 sequestration.

Mr. **Skeen**. Should be able to budget.

Mr. **Steinko**. Right.

THE COMMISSION

Mr. **Skeen**. I understand too that you do not now have a full complement on your Commission. What is your selection process, and when do you anticipate completing your board?

Mr. **Nething**. Twenty of the 26 members are appointed by the President, upon recommendations to the President from various groups. For example, I believe we still have two vacancies left on the governors, and those recommendations come from the National Governors Association.

The legislators are all current. I believe there are four mayors that come from both the U.S. Conference of Mayors and from the National League of Cities. There are six Congressional appointments. Of course, the three senators are appointed by the Majority Leader, and the Speaker appoints the three House members.

The public members, I believe, we now have a full complement there. There are no particular recommendations from which the Administration chooses the public members. Incidentally, the breakdown for the state legislators, where we have political identification, has two of the members come from the President's party, and the third member comes from the other party.

Mr. **Skeen**. I see.

Mr. **Nething**. So far, it has been limited to Republican and Democrat.

Mr. **Skeen**. Well then, what are there in the way of vacancies in total?

Mr. **Steinko**. There are five vacancies. There are two mayors, two governors, and one representative of the House.

Mr. **Skeen**. So in a total sense, then you are——

Mr. **Nething**. We are pretty good.

Mr. **Skeen**. You are in pretty good shape, you are not hurting for——

Mr. **Nething**. There is always a little bit of lag, it seems.

Mr. **Skeen**. Yes, vacancies that have been there and so forth and give you problems.

Mr. **Nething**. Yes.

Mr. **Skeen**. Do they deal pretty well in a timely fashion from the President on down through, or is it just a matter of——

Mr. Steinko. It depends on the political season of the year.

PRODUCT SALES

Mr. Skeen. I see. That answers the question, I think, very appropriately. I have no other questions, and I commend you on the work that you have done. Oh, the outside income thing is very interesting. I noticed that your sales—and I assume this is coming from sales of reports and your documents and so forth.

Mr. Nething. Right, many of those used to be given away free. And when Congress suggested to us that we needed to find additional revenues, we terminated many freebies and now charge for them.

Mr. Skeen. You have a readily acceptable clientele then?

Mr. Nething. Right.

Mr. Skeen. I would assume, because it shows a pretty constant return.

Mr. Steinko. I should point out that this year, under new JCP initiatives, we might have a possible adverse effect on our revenue from this source because currently we are receiving all of the income from the sale of our publications, but with GPO potentially overriding our print order, which gives them the copies at the cheapest cost per copy, and selling them and keeping the revenue at the GPO level—we have got a competitor selling our own product at a cheaper cost.

Mr. Skeen. I think you have got someone muscling in on your deal.

Mr. Nething. You get something good going, right?

Mr. Skeen. Yes, I do not know whether you are going to have to take protection or what, but I am glad you told us about it because I do not understand their position. Maybe they have recovery problems or something of that kind. But then it seems to me like it has been working very well up to this point.

Mr. Steinko. I think they want to tap the kitty.

Mr. Skeen. Well, I think also that it indicates you have done a pretty good job of producing the reports and so forth, and there is a readily available sales market for them.

Mr. Steinko. Yes. "Significant Features of Fiscal Federalism" is the one they are after.

Mr. Skeen. Of course, I am not criticizing GPO for having an interest in private sector business, but then I do not think they ought to be muscling you because you developed a market and so forth.

Mr. Nething. That is right.

Mr. Skeen. You ought to reap the benefits from it.

Mr. Nething. Thank you.

Mr. Skeen. Thank you all very much for your testimony.

STATE ACIRS

Mr. Akaka. Mr. Nething, I understand you have been working with 27 states. Did you say there was an increase in the number of states you are working with now?

Mr. Nething. What is taking place is that—and I do not know the exact number from four or five years ago—in recent years, we find many more states forming their own advisory commissions within the states. We in turn then work with the states and help set them up. We work with them even after they are set up. I know in North Dakota we started out with a couple of sessions. I tried to get one established, and we kept running into fiscal problems. Then our Governor finally established one by executive order. And then we were able—once we got it that way—to have our own state ACIR. But we look to our national ACIR for a lot of help because they are the ones that do the publications for us, and then we help dispense that information.

Mr. STEINKO. At one of our regular commission hearings each year, there is a meeting of the state ACIRs so that they can have an interchange in a face-to-face situation. Those always have been very heavily attended. And it also lets them see how the Commission functions and to take that back to their own states.

The number of active ACIRs fluctuates—in the past couple of years between 26 and 28. But we have had queries on the establishment of additional ones.

MEMBER SELECTION

Mr. AKAKA. On your Advisory Commission, how are the members selected?

Mr. NETHING. You mean on the national?

Mr. AKAKA. Yes, on the national.

Mr. NETHING. The 20 are appointed directly by the President.

Mr. AKAKA. I see.

Mr. NETHING. And then the Congressional representation, the Speaker appoints the three House members and the Majority Leader, the three senators.

Mr. AKAKA. What is the term of office?

Mr. NETHING. It is a two-year term, but on occasion those terms lag, as Mr. Steinko was saying, depending upon the political season. They may not get around to making the appointment. Or if your term were to expire, say, prior to a national election, they may hold it over until the new President would come in. And that happened in some instances when President Bush was elected.

Mr. AKAKA. Are the appointments made in a similar manner by the states?

Mr. NETHING. Yes, it is. It varies again, but the governor as the chief executive has considerable latitude doing that, and I think in some instances legislators. I know in our state the legislative appointments to our state ACIR were retained with the legislature itself.

PROJECT SELECTION

Mr. AKAKA. I know you have limits in your studies, but how are the projects that you study each year selected?

Mr. NETHING. The Chairman of ACIR appoints a kind of a special committee that helps organize the agenda. From that agenda the staff will put together suggestions. For example, I am a state legislator. NCSL will submit recommendations as to the things that they see as important. The staff will give us a compilation of exactly what has been requested and their own ideas. Then the subcommittee—incidentally we put our agenda together last June for the next two years—sits down and we just try to prioritize and try to find out where it will plug into our budget. We try to get estimates as to what the cost of those efforts are going to be, and then we prioritize on that basis.

Occasionally we will take a subject, and we will say "provided additional funding is found." That means the staff needs to develop, either through a conference with other organizations, which we did with banking issues, for example, telecommunications, or we continue to look for outside resources. The Research Committee will put together their ideas, and then it goes to the full Commission. Then the Commission considers and approves the agenda.

Mr. **Akaka**. Now when it is finally completed, what happens? Do you print a report for each project?

Mr. **Nething**. We receive a regular report. Once we have adopted our agenda, we receive monthly reports from the staff advising what the status is. So it is being monitored all the time. All Commission members are able to monitor.

AUTOMATION

Mr. **Akaka**. What kind of automation do you have?

Mr. **Steinko**. I am happy to say we are probably one of the more automated offices. Every professional is at least on a PC. We have Interleaf desk top publishing which produces all of our publications which the State of North Carolina has declared is the best system available.

We are currently upgrading our statistical machines to 386 computers to handle the bulk of the processing. We have tape master drives to handle the census data which goes into a lot of our publications and our analyses and which will become very significant in a period of about two years as the 1990 census material comes through.

Other than that, we have in-house duplicating. We lost our printing plant under a JCP regulation calling for small agencies to consolidate. We have fax capability, micro imaging and scanning capability that is on loan to us free from other small agencies. That is one advantage of the small agencies that I think we talked to you about two years ago, Representative Skeen. With a group of small agencies in the building we are able to share facilities and services, and it maximizes the impact of a dollar spent when we can do that.

Mr. **Akaka**. Does your Fiscal Year 1991 budget contain any funds for automation?

Mr. **Steinko**. No, we have to do that out of what we earn outside or save at the end of the year. We have not had an equipment budget since 1972.

CONTRACTS

Mr. **Akaka**. You also mention that you were receiving revenues from the sale of these documents. You also receive or obtain revenues from contracts and administrative services.

Mr. **Steinko**. That is correct. We have contracts with other small agencies, both temporary and permanent. In 1989 we completed a contract with the National Council on Public Works Improvement to handle their closing audit and to close them down officially.

We have a continuing contract to handle the accounting of the Harry S. Truman Scholarship Foundation. We also put them through an audit that cleared us of any problems, and so we got the go ahead to renew that contract which has been done.

We also do publications production on our Interleaf software and equipment for other Federal agencies. We just produced the annual report of the Board for International Broadcasting. And we do MAPGA publications in the private sector. And there is a possibility we will be doing the Overseas Private Investment Corporation annual report.

Mr. **Akaka**. I understand you have been quite successful with your administrative services.

Mr. **Steinko**. We try to.

Mr. **Akaka**. Do you expect to expand these revenue generating activities——

Mr. **Steinko**. As much as time and current resources will allow. We are currently looking at two agencies that stayed with GSA for a second year, both of which are attached to the Hill. They are the Barry S. Goldwater Scholarship Foundation and the James Madison Scholarship Foundation. They are currently with GSA, and we are going to try to prove that we are cheaper than the General Services Administration, which is not a hard task.

Mr. **Akaka**. So I will remember this agency because in 1959 Hawaii became a state.

Mr. **Steinko**. Right.

Mr. **Akaka**. Well, are there any further questions?

Mr. **Skeen**. Not from me. Thank you all.

Mr. **Akaka**. Thank you very much.

Mr. **Nething**. Thank you.

Mr. **Akaka**. That concludes the testimony.

[The budget justifications follow:]

August 31, 1989

The Honorable Richard G. Darman
Director
Office of Management and Budget
Room 252
Old Executive Office Building
Washington, DC 20503

Dear Mr. Darman:

The FY 1991 budget requests of the Advisory Commission on Intergovernmental Relations (ACIR) are hereby submitted in accordance with OMB *Circular A-11*, Revised, Transmittal Memorandum No. 60. This Summary and Highlight Memorandum attempts to fulfill the requirements of Section 15.1.

As required by section 1108(b) of Title 31, United States Code, I am reporting that all statements of obligations furnished to the Office of Management and Budget in connection with the Advisory Commission on Intergovernmental Relations requests for proposed appropriations for the fiscal year 1991 consist of valid obligations as defined in section 1501(a) of that title.

Given that ACIR's statutory functions and objectives remain the same as in prior years, no description is incorporated in this memorandum.

Respectfully,

John Kincaid
Executive Director

Enclosures

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Table of Contents to Budget Request

Budget Request Summary, FY 1991 1

Outline of ACIR's Work Program 1
ACIR's Productivity 2
ACIR's FY 1991 Budget Request 2
Product Sales and State Contributions 2
ACIR Cost-Reduction Measures 2
Cost Analysis of FY 1991 Budget 4
10-Year Budget Comparison (in thousands of dollars) 5

Appendix A—**Research Program and Project Status Report** 6

I. Continual Monitoring and Information Dissemination 6

Catalog of Federal Grant-in-Aid Programs to State and Local Governments 6
Changing Public Attitudes on Governments and Taxes (Annual Public Opinion Poll) 6
Intergovernmental Perspective (Quarterly Magazine) 6
Significant Features of Fiscal Federalism (Annual) 6
Measuring State Fiscal Capacity and Effort (Biennial) 7
State-Local Government Finance Diskettes (Annual) 7
State Government Tax Revenue Diskettes (Annual) 7
Federalism/IGR Digest 8

II. Topical Research Projects 8

A. Projects Near Completion 8

Local Revenue Diversification: Sales Taxation 8
Revenue Diversification for Rural and Nonurban Communities 8
State Taxation of Banks: Issues and Options 9
Congress, the States, and Federalism 9
The Representative (State) Expenditure System: The Neglected Dimension of Fiscal Capacity 9
Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation 10
State Mandates on Local Governments 10
Survey of State ACIRs 10
Welfare: Designing a More Efficient and Effective Intergovernmental Welfare System 10
Interjurisdictional Tax and Policy Competition: Good or Bad for the Federal System? 11
Setting New Agendas for Intergovernmental Decentralization: The International Experience 11
How Local Public Economies Work: Equity, Viability, and Service Responsiveness in America's Civil Communities 11
State Taxation and Regulation of Telecommunications Firms 11
The Public Financing of Elementary and Secondary Schools 12

B. Projects in Process 12

Boundary Review Commissions: Good or Bad for Local Self-Government? 12
Federal Preemption of State and Local Laws and Authority 12
Monitoring Developments in the Regulation and Taxation of Banking 12
Local Governments in International Affairs 13
State Governments in International Affairs 13
Water Resource Management in the Federal System 13
Federal Mandate Reimbursement 14
Local Self-Reliance: Alternative Approaches to Providing Local Public Services 14

C. Projects Planned for Initiation in FY 1990 14

A Decade of Change in American Federalism: Passing Phase or Turning Point? 14

Immigration and Federalism: Costs, Civil Liberties, Foreign Policy, and Intergovernmental Tensions 14
The Role of General Purpose Governments in the Administration of Justice 15
Federal, State, and Local Compliance with Mandates: The Case of Environmental Protection 15
Federalism Impact Analysis: The Federalism Executive Order, Fiscal Notes, Regulatory Relief, and Waivers for Small Governments 15
Public Works Perspectives 16
State Courts and Local Autonomy 16
Siting Locally Unwanted Land Uses 16
Shifting Functions in the American Federal System 16
Strengthening State and Local Revenue Systems for Equity and Efficiency 17
Local Fiscal Capacity and Fiscal Equalization 17
World Competitiveness in Telecommunications: The Critical Role of the States and Localities 17
Financing Streets and Highways 18
State Taxation of Insurance 18

III. Possible Future Research Projects 18

Government Finance Research 19
Government Policy Research 19
Conferences 19

Appendix B—**ACIR Publication and Product Production, FY 1960-89** 20
Appendix C1—**ACIR Revenue History, FY 1960-90** 21
Appendix C2—**ACIR Revenue History, FY 1960-88 (in constant 1982 dollars)** 22
Appendix D—**ACIR Personnel History, FY 1961-89** 23
Appendix E—**ACIR Office and Warehouse Space History, FY 1979-89** 24

Budget Request for Fiscal Year 1991 25

Salaries and Expenses 26

Indicated Change 26
Language 27
Narrative Statement 28
Program and Financing (in thousands of dollars) 29
Object Classification (in thousands of dollars) 30
Personnel Summary 31
Average Grades and Salaries 32

Trust Funds 33

Narrative 33
Program and Financing (in thousands of dollars) 34
Object Classification (in thousands of dollars) 35

All Accounts (Justification and supporting schedules) 36

Detail of Permanent Positions 36
Agency Expenditure for Civilian Benefits 37
Permanent Staff 38
Organization Chart 39
State Contributions Received 40
Honorariums Received 41
Reimbursable Program Reimbursements by Object Classification 42
Reimbursable Program Receipts 43
Direct Program Object Classification Net Change Justification FY 1990-91 44
Invitational Travel 45
Personal Services Product Contracts 46
Equal Employment 47
Publication Costs (including estimates) 48

Adjustments for 5 Percent Reduction 49

Program and Financing (in thousands of dollars) 49
Object Classification (in thousands of dollars) 50
Personnel Summary 51
Average Grades and Salaries 52

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Budget Request Summary, FY 1991

The Advisory Commission on Intergovernmental Relations (ACIR), a federal agency established in 1959, is the nation's leading source of nonpartisan research, statistics, information, and policy recommendations on American federalism and intergovernmental relations. The Commission is a unique, 26-member, bipartisan forum consisting of three private citizens, three members of the U.S. House of Representatives, three members of the U.S. Senate, three officers of the U.S. executive branch, four governors, four mayors, three state legislators, and three elected county officials.

Outline of ACIR's Work Program

The work program (see Appendix A) is formulated by the Commission in consultation with federal, state, and local officials; relevant organized interest groups; scholars; and private citizens. As appropriate, the Commission also undertakes research at the request of the White House and the Congress, and cooperates with other federal agencies, such as the Department of Agriculture, Department of Commerce, and Department of Justice. In addition, ACIR works closely with the nation's 29 state-equivalent ACIRs.

ACIR's work program includes:

- regular information dissemination activities, such as the annual, two-volume *Significant Features of Fiscal Federalism* and the quarterly *Intergovernmental Perspective*;
- data diskettes on federal, state, and local finances; and
- research and policy projects on specific issues of current and future importance in intergovernmental relations.

High priority has been given recently to legal, fiscal, and governmental balance in the federal system. ACIR has also given considerable attention to strengthening state and local governments in light of changing federal fiscal and programmatic priorities.

ACIR is presently examining the varieties of mechanisms employed by the Congress to preempt state authority and the problems posed by both the diversity and scope of preemption. The ACIR is looking as well at criteria and mechanisms for federal mandate reimbursement. Shortly, ACIR will issue reports on sales taxes and rural and nonurban communities as part of its series on local revenue diversification. ACIR also initiated a project and has prepared a preliminary report on groundwater management in response to increased state regulatory activity and possible federal legislation.

A number of projects are of special interest to state and local governments, including research on state and local activities in international trade and investment promotion; state and local initiatives on productivity, technology, and innovation; state and local fiscal capacity and tax effort; state taxation and regulation of interstate banking and telecommunications; state constitutions in the federal system; local governance in metropolitan areas; interjurisdictional tax and policy competition; representative state expenditure measures; and school financing in the decade ahead.

Upon request, the ACIR comments, within its expertise, on pending Congressional legislation. The ACIR also responds to numerous requests for information from federal, state, and local officials; businesses; associations; scholars; private citizens; and foreign officials and nationals. Findings from ACIR reports and comments of ACIR staff members appear regularly in the press around the country.

ACIR's Productivity

Our FY 1989 goal was to maintain or increase the level of productivity per employee of FY 1988, despite a declining appropriation. ACIR has achieved this goal. For the third year in a row, ACIR will have had the highest level of productivity per employee in its 30-year history.

With the close of FY 1989, ACIR finally will be able to concentrate more effectively on its mission. The FY 1990 appropriation of $1,300,000 is the minimum base the Commission has sought from the Congress. Productivity increases should inure with the stabilization of appropriated funding and can accelerate with the receipt of additional outside funds from contracts, sales, and contributions.

ACIR's FY 1991 Budget Request

ACIR's budget request for FY 1991 is $1,300,000. This level of appropriation falls within OMB guidelines and is essential if ACIR is to be a viable federal agency. A reduction of 5 percent in appropriation, as suggested by the alternate submission—$65,000—would:

- reduce productivity by about 10 percent;
- terminate one or two staff positions; and
- reduce the number or reports and products by about three.

Product Sales and State Contributions

ACIR has made a major effort to increase revenues from product sales and state contributions. Revenue from both sources has increased from FY 1988 to FY 1989. A record amount of state contributions was received from states in FY 1989, and additional increases in revenue from this source will continue to be sought by the Commission, although soliciting such contributions is a difficult and time-consuming process.

ACIR Cost-Reduction Measures

During the past six years, ACIR has regularly instituted cost-reduction measures.

- *Permanent Staff Reduction and Increased Use of Contractors.* Since FY 1986, ACIR has made ever greater use of "life-of-project" contractors (individuals or firms) rather than permanent staff to reduce overall personnel, employment advertising and search, and project start-up costs. ACIR achieved a net reduction of two total compensable work years in FY 1988 and two in FY 1989.

- *Space.* In compliance with Reform 88 initiatives (to reduce overall federal office space utilization) and coincident with the reduction in permanent staff and funding, ACIR again reduced its office space in FY 1989, this time by 1,591 square feet—the fourth straight year either office or warehouse space has been reduced. This resulted in a savings of approximately $19,000 in FY 1989.

It is anticipated that these savings and ACIR's ability to retain revenues from the sale of goods and services will allow the Commission to continue living within the Office of Management and Budget's Long-Range Guidelines through FY 1993. However, the Commission is no longer in a position to reduce staff, space, or other aspects of its operation without also reducing productivity significantly. The Commission's 29-year record of remaining small and frugal while maintaining its vitality and high productivity will be sorely tested over the next several years.

It should be noted that a "fly in the ointment" is the GSA-forced move that ACIR is currently facing. While the move does offer the opportunity to further reduce space, it is projected to increase our rental costs substantially.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Cost Analysis of FY 1991 Budget

In FY 1991, three object classifications, the costs of which are not entirely under agency control, will consume ACIR's entire appropriation plus $17,000 of earned income. These object classifications are personnel costs, rent, and communications, utilities, and miscellaneous charges.

The percentages in the table below show how much of ACIR's reduced appropriation is spent on these object classifications in each of the three budget years — PY, CY, BY — despite vigorous ACIR cost control efforts. In FY 1989, nondiscretionary expenditures consumed ACIR's entire appropriation. In FY 1990, ACIR will have $19,000 in discretionary funding in its appropriation. In FY 1991, nondiscretionary expenditures, again, will consume more than the appropriation.

Expenditure (in $000s)	FY 1989		FY 1990		FY 1991	
	Amount	Percent	Amount	Percent	Amount	Percent
(Appropriation)	$1,040		$1,300		$1,300	
Personnel Costs	710	68.3%	782	60.2%	806	62.0%
Personnel Benefits:						
Civilian	134	12.9	156	12.0	168	12.9
Former Employees	17	1.6	. . .	0.0		
Rental payments to GSA	249	23.9	260	20.0	260	20.0
Communications, utilities, and miscellaneous charges	80	7.7	83	6.4	83	6.4
Total Expenditures, and as a Percent of Appropriation	$1,190	114.4%	$1,281	98.5%	$1,317	101.3%

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

10-Year Budget Comparison
(in thousands of dollars)

The table below indicates that from FY 1982 projected through the current ACIR appropriation for FY 1990, the absolute amount appropriated for the Commission has decreased by $463,000 or just over 26%. However, ACIR's appropriation has decreased $848,000 or 39.5% from its 1980s peak in 1985. This decline stands in direct contrast to growth in many other federal agency appropriations, the rate of inflation, and the annual GNP. The FY 87-90 decline is the result of Congressional action taken in 1985. The largest share of the decrease has been taken out of personnel. The part of ACIR's appropriation totally under agency control, referred to as discretionary, has been reduced from $261,000 in FY 1982 to $0 in FY 1991.

Fiscal Year	Amount In Presidential Budget	Amount Appropriated	Personnel Benefits Rent, Communications and Miscellaneous Charges	Discretionary Portion of Appropriation*	
				In Current Dollars	In Constant* 1982 Dollars
1982	$1,998	$1,763	$1,502	$261	$261
1983	1,920	1,940	1,505	435	429
1984	2,016	2,016	1,564	452	428
1985	2,131	2,148	1,843	305	282
1986	2,058	1,953	1,456	497	459
1987	1,750	1,750	1,116	634	542
1988	1,390	1,378	1,127	263	213
1989	1,275	1,040	1,091	-0-	-0-
1990	1,300	1,300	1,281	19	. . .
1991	1,300		1,317	-0-	-0-

*Includes obligations for printing, contractors (predominantly research), supplies, travel, and equipment.

Notes:
1982—Staff reduced by two full-time positions.
1983—Deliberately sacrificed personnel vacancies for computer equipment.
1986—House-directed reduction begins with status quo appropriation. Staff reduced by four full-time positions.
1987—Staff reduced by five full-time positions.
1988—Staff reduced by two full-time positions.
1989—Staff reduced by one full-time position.

Appendix A

RESEARCH PROGRAM AND PROJECT STATUS REPORT

I. Continual Monitoring and Information Dissemination

Project Name:	Catalog of Federal Grant-in-Aid Programs to State and Local Governments
Initiation:	Approved by the Commission as a report issued every two or three years under the general mandate of the ACIR to collect and disseminate information relevant to intergovernmental relations. The first edition was issued in October 1977 as one volume of a multivolume study entitled *The Intergovernmental Grant System: An Assessment and Proposed Policies*.
Assigned Staff:	Bruce D. McDowell and Albert J. Richter (contractor)
Description:	This catalog lists and describes each program of federal grants to state and local governments that is actually funded for the fiscal year covered by the catalog. The characteristics described include the type of grant (revenue sharing, block grants, or categorical grants), the method of allocating funds (eligible recipients, formula elements, discretionary authority), budget function and subfunction classifications, and other items. This catalog has been one of ACIR's best sellers.
Current Status:	The 1987 edition was published in August 1987. Research for the FY 1989 edition began in February 1989.
Expected Completion:	The FY 1989 edition is expected to be published in September 1989.

Project Name:	Changing Public Attitudes on Governments and Taxes (Annual Public Opinion Poll)
Initiation:	Approved by the Commission in 1972
Assigned Staff:	Bruce D. McDowell, Debra L. Dean (contractor), and The Gallup Organization (contractor)
Description:	Since 1972, ACIR has commissioned a public opinion poll on governments and taxes. Two questions have been asked every year, and the responses to those questions provide a unique measure of long-term trends in public opinion on federalism and taxes. Other questions are asked at intervals, or are designed to meet the needs of current ACIR research projects. Polling is done by personal interviews by the Gallup Organization; results are summarized by ACIR staff. Results of the poll appear in newspapers, magazines, and other outlets around the country.
Current Status:	Polling for the 1989 survey was done in June 1989. The 1989 poll was reduced to 10 questions from 13 in 1988.
Expected Completion:	*Changing Public Attitudes on Government and Taxes – 1989* will be published in September 1989. Work on the 1990 poll will begin in March 1990.

Project Name:	***Intergovernmental Perspective*** **(Quarterly Magazine)**
Initiation:	Approved by the Commission in 1974
Assigned Staff:	Joan A. Casey and John Kincaid
Description:	This is a glossy magazine of 30-40 pages ordinarily published four times a year. The magazine contains articles, points of view, and research reports about current issues in federalism and intergovernmental relations. Also included are news notes about the ACIR and about publications and microcomputer data diskettes available from ACIR. The magazine serves a constituency of more than 20,000 private citizens, public officials, business people, and academics.
Current Status:	Issues for FY 1990 have been planned and articles are being prepared for these issues.
Expected Completion:	The magazine will appear four times in FY 1990 and four times in FY 1991.

Project Name:	Significant Features of Fiscal Federalism (Annual)
Initiation:	Approved by the Commission as an annual report under the general mandate of the ACIR to collect and disseminate information relevant to intergovernmental relations.
Assigned Staff:	Robert D. Ebel and Clay Durnthoff (contractor)
Description:	ACIR published *Significant Features of Fiscal Federalism* periodically (under different titles) from the Commission's inception through 1977. The report has been updated and

	issued annually since 1977. Among the most widely used of ACIR's publications, *Significant Features* presents data and information on national, state, and local revenues, expenditures, tax rates, public sector employment and earnings, and additional topics that vary from year to year. The report provides timely basic information that is often used as a basis of analysis by members of Congress, state legislatures, federal agencies, special federal and state tax and expenditure study commissions, citizen groups, and the media. To ensure the timeliness of the data, *Significant Features* is issued in two volumes. Volume I contains information on tax rates for federal, state, and local governments and is issued in time for state and local policymakers to use in new year policy decisions.
	Volume II presents data on federal, state, and local government revenues and expenditures, including tables on revenues by source, expenditures by function, and state-by-state rankings. The 1989 Volume I edition includes updated tables presenting results of a survey of state revenue departments relating to income taxation and property tax relief. The 1989 edition of Volume II of *Significant Features* contains expanded narratives analyzing the data presented.
Current Status	The 1989 Volume I edition was published in January.
Expected Completion	Volume II of the 1989 edition will be published in September1989. Work has begun on the 1990 Volume I edition.
Project Name:	Measuring State Fiscal Capacity and Effort (Biennial)
Initiation	This is a continuing activity that, until this year, included annual updates. Because of budget reductions, updates will now be done biennially.
Assigned Staff	Carol E. Cohen and Price Waterhouse (contractor)
Description:	ACIR research on improving the measurement of state-local fiscal capacity began in 1962 with the staff report *Measures of State and Local Fiscal Capacity and Tax Effort*. That report was the first to present estimates of the Representative Tax System (RTS), an alternative to per capita income as a measure of state and local fiscal capacity. In 1982 the Commission recommended that the federal government use a fiscal capacity index, such as the RTS, and that estimates of capacity be prepared periodically. Since that time, the ACIR has also developed and published a more comprehensive measure, the Representative Revenue System (RRS). The most recent RTS and RRS estimates published by the Commission are for 1986 (M-165, March 1989).
Current Status	The report containing estimates based on 1988 data will be contracted out in December 1989.
Expected Completion	The next report is expected to be published in early March 1990.
Project Name:	State-Local Government Finance Diskettes (Annual)
Initiation	The state-local government finance diskettes were approved by the Executive Director in October 1985, under the general mandate of the ACIR to collect and widely disseminate information relevant to intergovernmental relations. The diskettes are prepared annually in order to serve two purposes. First, they organize basic U.S. Bureau of the Census data in a manner that permits federal, state, and local government personnel, as well as others involved in intergovernmental analysis, to carry out a wide range of data manipulations in support of policy research. Second, the diskettes provide the data from which the ACIR produces the annual *Significant Features of Fiscal Federalism*.
Assigned Staff	Robert D. Ebel, Clay Dursthoff (contractor), and Michael Lawson (contractor)
Description	The set of six state-local diskettes contains data for 216 expenditure classifications and 117 revenue classifications that are collected by Census, as well as population and income data for the 50 states and the District of Columbia. By formatting this data as an extension of *Significant Features*, users can examine state-by-state fiscal trends for state and local governments combined, and/or construct data bases for state governments only and local governments only. At present, diskettes are available for fiscal years 1983 through 1987.
Current Status	The set of FY 1987 diskettes was completed in July 1989. Work on the 1988 data will begin once the Census tapes are made available in December 1989.
Expected Completion	The 1988 data diskettes will be available in July 1990.
Project Name:	State Government Tax Revenue Diskettes (Annual)
Initiation	The state government tax revenue diskettes were approved by the Executive Director in May 1987 under the general mandate of the ACIR to collect and disseminate informa-

	tion relevant to intergovernmental relations. The state government tax revenue diskettes also serve as an extension of the annual tax rate volume of *Significant Features of Fiscal Federalism*.
Assigned Staff:	Robert D. Ebel, Clay Dursthoff (contractor), and Michael Lawson (contractor)
Description:	This series contains the same set of classifications of tax revenue for the states as the state-local government finance diskettes. The distinguishing feature of the state tax revenue series is that Census makes these data available six months earlier than the state-local numbers. The series contains data only for state governments. It does not contain local government data or state-by-state-totals for state and local governments combined. The series also excludes information relating to non-tax revenues (users charges, miscellaneous general revenue, and federal grants).
Current Status:	Work on the 1988 data will begin once the Census tapes are made available in December 1989.
Expected Completion:	The 1988 data diskettes will be available in July 1990.
Project Name:	Federalism/IGR Digest
Initiation:	Approved by the Commission in June 1987
Staff Assigned:	Joan A. Casey, Robert D. Ebel, and Bruce D. McDowell
Description:	This Digest would be a monthly communication with Commission members, selected public officials, and others active in the intergovernmental relations field. Many Commission members feel a need for more frequent and concise communications to draw their attention in a timely fashion to current events in federalism and intergovernmental relations. This Digest, therefore, would be designed to be read by busy policymakers. Because of continuing lack of resources, this Digest may begin in a format more akin to a letter from the Executive Director than a formal newsletter. At most, it would be four pages.
Current Status:	Initiation contingent on funding and priorities to be established for FY 1990-91.
Expected Completion:	This monthly publication would be expected to continue as long as Commission members and others find it helpful.

II. Topical Research Projects

A. Projects Near Completion

Project Name:	Local Revenue Diversification: Sales Taxation
Initiation:	Commission adopted work plan in March 1983
Assigned Staff:	Carol E. Cohen and Holley Ulbrich (contractor)
Description:	This is one of four reports designed to examine the structure and effects of local nonproperty taxation. The first two reports—User Charges and Income Taxation—were published in 1987 and 1988 respectively. The local sales tax report is near completion. This report presents new information regarding the growth, structure, and revenue significance of local sales taxes used in various U.S. municipalities (including some large city data), counties and certain special districts. The report describes the nature of these taxes and provides a discussion of their likely economic impacts. Although the report will be of primary interest to practitioners of state and local taxation, the report will also provide some information that is relevant to the present congressional discussions regarding the pros and cons of adopting a national sales tax (e.g., the effect on the competitiveness of a jurisdiction that uses a sales tax vis-a-vis a nonsales tax jurisdiction).
Current Status:	A final draft has been edited for publication.
Expected Completion:	The report is scheduled for publication in September 1989.
Project Name:	Revenue Diversification for Rural and Nonurban Communities
Initiation:	Approved by the Chairman on the request of the Economic Research Service of the U.S. Department of Agriculture that ACIR produce a special report on local revenue generation in nonurban areas.
Assigned Staff:	Robert D. Ebel and Carol E. Cohen, with Richard Reeder (USDA), Larry DeBoer (contractor), Susan MacManus (contractor), and Thomas Stinson (contractor)

Description: **In diversifying their revenue sources, rural and nonurban local governments face problems that are much different from other communities. Some communities face pressures from creeping urbanization and urban service demands on rural tax bases, while other communities must grapple with declining property and income tax bases as the agricultural economy shrinks and the area's population declines. The studies in this report will examine the nature of these concerns and then discuss the opportunities and limitations for the generation of own-source revenues in rural areas. This discussion will, in turn, lead to some conclusions regarding the appropriate role, if any, that the federal and state governments must play in providing fiscal support for nonurban America. Accordingly, the report will be of interest to federal and state policymakers alike.**

Current Status: The contractors have submitted their final draft.

Expected Completion: Publication of the report is scheduled for September 1989.

Project Name: State Taxation of Banks: Issues and Options

Initiation: Approved by the Commission in June 1987

Assigned Staff: Robert D. Ebel and Sandra B. McCray (contractor)

Description: This is the second of a two-part examination of the intergovernmental implications of recent developments in the U. S. banking industry. The focus of the first report issued in September 1988 was on the regulatory aspects of the industry. This second part focuses on the judicial and economic implications of the taxation of banking in the context of the emergence of new forms of banking (e.g., "branchless banks" and "non-bank banks") and the proliferation of regional, in some cases, nationwide interstate banking. The key issues, which are certain to be the focus of future litigation (in federal as well as state courts) and of intensive policy debate throughout the fifty states, include those of determining tax situs, establishing jurisdictional rules, and identifying methods for apportioning the income of multistate banking operations among the separate states. The report is not intended to reach definitive conclusions at this time but rather to provide state legislatures and federal officials with analyses of the advantages and disadvantages of various tax options in use or under consideration.

Current Status: The study has been approved for publication as an information report.

Expected Completion: Publication of the report is expected in September 1989.

Project Name: Congress, the States, and Federalism

Initiation: Approved by the Commission in June 1987

Assigned Staff: John Kincaid

Description: This series of reports addresses concerns about the proper balance of power and authority in the American federal system that have grown out of a decade of studies by the Commission and recent deliberations. Indicators of imbalance are presented along with a range of constitutional options for achieving better balance. The Commission is working with the Council of State Governments and the National Conference of State Legislatures, at their request, to develop a consensus on potential reforms.

Current Status: Three reports have been published.

Expected Completion: Publication of the final report is expected in October 1989.

Project Name: The Representative (State) Expenditure System: The Neglected Dimension of Fiscal Capacity

Initiative: Approved by Chairman and Executive Director, July 1988

Assigned Staff: Robert W. Rafuse, Jr. (Senior Fellow)

Description: The potential ability of a state or local government to raise revenues is an incomplete characterization of its fiscal capacity unless revenue-raising ability is related to the costs of a government's service responsibilities (often referred to as "needs"). Although this relationship was recognized as central to the measurement of fiscal capacity as early as the 1930s, and received attention in ACIR's pervious work on fiscal capacity in the early 1960s, in recent years the ACIR has not explored the cost side largely because of difficulties involved in measurement. In 1986, the U.S. Treasury published a study presenting preliminary estimates of relative state needs derived from a representative expenditure system, an approach that draws from the methodology developed in the Representative Tax/Representative Revenue system. This project will update and refine the 1986 Treas-

	ury estimates and explore the possibilities for application of the approach within the states.
Current Status	The Commission approved the report for publication as an information report at its June meeting.
Expected Completion	Publication of the report is expected in October 1989.
Project Name:	**Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation**
Initiation	Authorized by the Commission in September 1988
Assigned Staff	Bruce D. McDowell, Barbara J. Lipman (contractor), and Marcia Carroll (contractor)
Description	Section 6 of the *1988 Foreign Trade Act* requires the Office of Productivity, Technology, and Innovation in the U.S. Department of Commerce to establish and operate a clearinghouse for state and local initiatives on productivity, technology, and innovation. OPTI has asked ACIR to help establish this clearinghouse. In the words of the act, "The Clearinghouse shall serve as a central repository of information on initiatives by State and local government to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation and Federal efforts to assist State and local governments to enhance competitiveness." Under a contract with the Department of Commerce, ACIR is assisting in the design and initial installation of this Clearinghouse.
Current Status	Research is complete. The report is being drafted.
Expected Completion	This project will be completed by October 1989.
Project Name:	**State Mandates on Local Governments**
Initiation	Approved by the Commission in March 1987, at the request of the state ACIRs
Staff Assigned	Jane F. Roberts and selected state ACIRs
Description	Several state ACIRs volunteered to write papers about the experiences in their states with state mandates and reimbursements for state mandates. The U.S. ACIR responded with a pledge to edit these papers and publish them.
Current Status	All of the papers from the states are now in hand and are being edited for publication.
Expected Completion	Publication is expected in November 1989.
Project Name:	**Survey of State ACIRs**
Initiation	Approved by the Executive Director in 1987, at the request of the state ACIRs
Assigned Staff	Jane F. Roberts
Description	The Commission maintains continuing contact with all the statewide organizations in the nation that have as their principal concern state-local relations. There are 28 such organizations now. Some have structures very much like the U.S. ACIR; others differ. This survey describes the nature and agendas of each of these organizations that act as state counterparts to the U.S. ACIR.
Current Status	The survey is complete. It is being prepared for publication. Some additional examples of successful state ACIR projects are being sought, at the request of the National Conference of State Legislatures, to make this publication of even more practical value.
Expected Completion	Publication is expected in November 1989.
Project Name:	**Welfare: Designing a More Efficient and Effective Intergovernmental Welfare System**
Initiation	Approved by the Commission in March 1985
Assigned Staff	John Kincaid and Ronald J. Oakerson
Description	This report addresses the crucial role that intergovernmental relations play in welfare programs and in the reform of the American system of welfare. Recommendations for improved federal-state-local relationships are presented in the context of recently enacted federal reforms.
Current Status	The Commission took final action to approve this report in December 1987.
Expected Completion	Publication is expected in November 1989.

Project Name:	Interjurisdictional Tax and Policy Competition: Good or Bad for the Federal System?
Initiation:	Approved by the Commission in June 1987
Assigned Staff:	Robert D. Ebel and Daphne A. Kenyon (contractor)
Description:	In an era of increasing national concern about the competitiveness of the American economy, combined with the traditional concern on the part of state and local officials to provide a favorable environment for economic growth, the debate over the pros and cons of tax and policy competition (e.g., regulatory authority) among the states and localities will intensify. The debate comes at a time when the evidence of linkage between government incentives and job creation is mixed, and when legitimate arguments can be made both for and against policies that contribute to competition among U.S. jurisdictions. This report provides a thorough review of the extent of fiscal competition among the states, and addresses the arguments as to whether such competition is healthy or destructive for the federal system.
Current Status:	Final revisions are being made in response to Commission action and external reviews.
Expected Completion:	Publication is expected in November 1989.

Project Name:	State Taxation and Regulation of Telecommunications Firms
Initiation:	Approved by the Commission in June 1987
Assigned Staff:	Robert D. Ebel and Sandra McCray (contractor)
Description:	In the past few years, powerful technological, economic, and institutional forces have converged in a manner that has dramatically changed the structure of the U.S. telecommunications industry. As a result, state legislatures are having to deal with a complex array of regulatory and tax issues relating to the decline of monopoly power in the delivery of telecommunications services. This report will systematically identify and then address the nature of institutional and economic change within the industry and the related tax issues. Major topics of inquiry include the bases, if any, for differential treatment of interexchange (long distance) companies vs. operating companies, the scope of the tax base (e.g., treatment of access charges), and the revenue effects of special taxation of income, property, and purchases of telecommunications firms.
Current Status:	This study began with a thinkers' session in September 1988, and then built on information derived from a joint ACIR-NCSL (National Conference of State Legislatures) symposium, which was held in late November 1988 in Washington, DC.
Expected Completion:	Publication of the report is expected in November 1989, pending form and timing of Commission action.

Project Name:	The Public Financing of Elementary and Secondary Schools
Initiation:	Approved by the Commission in June 1987
Assigned Staff:	Robert D. Ebel and Vincent Munley (Visiting Scholar and contractor)
Description:	This study will provide an analysis of the basic elementary and secondary school finance systems that are employed in the 50 states. In order to capture the effects of the numerous state court decisions of the 1960s and 1970s, the study will begin with an examination of expenditure trends over the past 25 years, and then proceed to examine the relationship between alternative state financing schemes (e.g., district power equalizing vs. foundation programs) and the level and the geographic distribution of education spending. In addition, this study will consider how current financing systems are likely to affect federal and/or state initiatives designed to improve the quality of education.
Current Status:	The work began with a thinkers' session in January 1989, and the research will be presented to the Commission at its September meeting.
Expected Completion:	Publication of this report is expected in November 1989, pending form and timing of Commission action.

B. Projects in Process

Project Name:	Setting New Agendas for Intergovernmental Decentralization: The International Experience
Initiation:	Approved by the Chairman in 1987
Assigned Staff:	Bruce D. McDowell and Kelly Huebner (Graduate Student Intern)

Description: **This report will publish selected papers from an international conference of local government experts from around the world held by ACIR in Washington D.C. in February 1988. Special funding from the *Government and Policy Journal*, and Virginia Polytechnic Institute and State University assisted with this project. The conference was cosponsored by ACIR, VPI, and the London School of Economics.**

Current Status: The papers are being edited for publication.

Expected Completion: Publication is expected in February 1990.

Project Name: How Local Public Economies Work: Equity, Viability, and Service Responsiveness in America's Civil Communities

Initiation: Approved by the Commission in June 1987

Assigned Staff: Bruce D. McDowell, Ronald J. Oakerson (contractor), and Roger B. Parks (contractor)

Description: This study is an extension and expansion of Commission work on local self-government in the federal system. Recently completed is research on a second case study. This study focuses on Allegheny County, Pennsylvania, a highly "fragmented" metropolitan area. Included in the research are examinations of state-local and interlocal relations, the viability of small local governments, and the degrees and ways in which fragmentation and consolidation affect efficiency and equity in the production and provision of local public services. Based upon these two case studies, a final report is being prepared comparing their findings and drawing conclusions about the organization of local governments in metropolitan areas.

Current Status: A report on the first case study, St. Louis County, Missouri, was published in September 1988. The second case study is complete, and work on the comparative study has begun.

Expected Completion: Publication of the Allegheny County case study is expected in November 1989, pending form and timing of Commission action. The comparative analysis is expected to be published in February 1990.

Project Name: Boundary Review Commissions: Good or Bad for Local Self-Government?

Initiation: Approved by the Commission in June 1987

Assigned Staff: Bruce D. McDowell and Debra L. Dean (contractor)

Description: This study examines the operations of state Boundary Review Commissions for the purpose of determining the extent to which they should or should not have veto authority or other authority over the formation of new units of local government or the reorganization of units of local government.

Current Status: Research is nearly complete. The report is being drafted.

Expected Completion: Publication of the research is expected in February 1990, pending form and timing of Commission action.

Project Name: Federal Preemption of State and Local Laws and Authority

Initiation: Commission adopted work plan in March 1985

Assigned Staff: Bruce D. McDowell and Joseph F. Zimmerman (contractor)

Description: This project follows up on ACIR's major research on regulatory federalism, which was published in February 1984. The current research focuses on a typology of federal methods of preemption of state and local authority and on the consequences of various types of preemption for states and local governments.

Current Status: Research is complete. The draft report has been reviewed. Recommendations are being developed.

Expected Completion: The final report is expected to be published by February 1990, pending form and timing of Commission action.

Project: Monitoring Developments in the Regulation and Taxation of Banking

Initiation: Approved by the Commission in September 1988

Assigned Staff: Robert D. Ebel and Sandra B. McCray (contractor)

Description: With its recent research on state and federal regulation of banking and state banking taxation, the Commission has identified several areas in which rapid economic and institutional changes are occurring in the nation's financial industry. These changes have significant consequences for banks, consumers, local communities, and state economies. Pursuant to its role as a neutral forum for addressing intergovernmental issues, at its September 1988 meeting, the Commission established, for an initial period of one year, an intergovernmental monitoring group on state regulation and taxation of banking. This monitoring group was formally organized in July 1989 with Commissioner John Bragg selected as chair and Commissioner David Nething as a vice chair. The group has a membership of 18 persons who are broadly representative of the state and national interests. Following extensive discussions at its July 1989 meeting, the monitoring group agreed to hold a conference in Washington on December 13, 1989. The conference topic is "State Taxation and Regulation of Banking." The conference will be cosponsored by ACIR, the National Conference of State Legislatures, and the Multistate Tax Commission.

Current Status: A conference is planned for December 13, 1989.

Expected Completion: The group will report back to the Commission at its spring meeting. Publication of the December conference proceedings is planned for February 1990.

Project Name: Local Governments in International Affairs

Initiation: Approved by the Commission in June 1987

Assigned Staff: Bruce D. McDowell and Robert Maffin (contractor)

Description: This report will analyze the growing involvement of local governments, especially major cities and ports, in international affairs. Such activities as trade missions abroad, "sister city" programs, and local government resolutions concerning foreign policy issues will be examined. Federal, state, and local relationships in these activities, as well as constitutional issues and evaluation of the economic payoffs from such activities will be investigated.

Current Status: A thinkers' session was held in February 1988, and research is complete.

Expected Completion: Publication is expected in March 1990, pending form and timing of Commission action.

Project Name: State Governments in International Affairs

Initiation: Approved by the Commission in June 1987

Assigned Staff: Bruce D. McDowell and John M. Kline (contractor)

Description: This project is a larger companion to the research described above under the title of Local Governments in International Affairs. States have become increasingly active in international affairs, especially in sending foreign trade missions abroad and undertaking a variety of activities designed to promote exports from the states, attract foreign firms to establish operations within the states, and allow the states to compete more effectively in world markets. The new emphasis on international competitiveness has spurred this activity. This report will examine legal and constitutional issues involved in state international activity, matters of intergovernmental and interagency coordination, and the economic effectiveness of state international programs.

Current Status: The research is complete and the report is being drafted.

Expected Completion: Publication of the research report is expected in March 1990, pending form and timing of Commission action.

Project Name: Water Resource Management in the Federal System

Initiation: Approved by the Commission in June 1987

Assigned Staff: Bruce D. McDowell and William L. Blomquist (contractor)

Description: This project will draw on original case studies and published research to examine the intergovernmental issues involved in protecting the quality and quantity of groundwater in conjunction with the use and regulation of surface waters. Among other things, the study will examine the implications of congressionally proposed new national regulations for state and local regulation of groundwater protection and for water users who are organized locally to manage water resources. The key issue will be to evaluate the public and private institutions involved with competition, coordination, and cooperation in the use of these resources, and to comment on proposed national legislation.

Current Status: The research is under way.

Expected Completion: Publication of the research report is expected in April 1990.

Project Name:	**Federal Mandate Reimbursement**
Initiation:	Commission adopted work plan in March 1985
Assigned Staff:	Bruce D. McDowell and Joseph Zimmerman (contractor)
Description:	This report will build, in part, on GAO's research on state and local experiences in complying with federal mandates and in being reimbursed for the costs related thereto. The report will develop and examine criteria for reimbursement and the appropriateness and adequacy of federal reimbursement practices—present and proposed.
Current Status:	The research will be conducted during the Fall of 1989.
Expected Completion:	Publication of the report is expected in May 1990, pending form and timing of Commission action.

Project Name:	Local Self-Reliance: Alternative Approaches to Providing Local Public Services
Initiation:	Commission adopted work plan in March 1985
Assigned Staff:	Bruce D. McDowell and Ronald J. Oakerson (contractor)
Description:	This project examines the broad range of possible approaches to providing local public services—including contracting (both private and intergovernmental), franchising, user charges, joint service agreements, and load-shedding—as means of promoting greater local self-reliance. Because of widespread interest in contracting, as well as substantial evidence of efficiencies to be gained from contracting, this mode of service production was selected for special emphasis. After assembling data for a representative sample of all municipalities over 10,000 population in the nation, analysis was conducted to learn more about the conditions under which contracting does and does not work, including an assessment of its fiscal effects on local communities.
Current Status:	The report is in preparation. An additional set of survey data for 1988 has become available from the International City Management Association, and will be used to enhance this study in combination with new data from the *1987 Census of Governments*. The final Census tapes have been delayed.
Expected Completion:	Publication is expected in August 1990, pending form and timing of Commission action.

C. Projects Planned for Initiation in FY 1990

Project Name:	A Decade of Change in American Federalism: Passing Phase or Turning Point?
Initiation:	Approved by the Commission in June 1987
Staff Assigned:	Robert D. Ebel, Bruce D. McDowell, and others
Description:	The decade from 1978 to 1988, roughly speaking, has seen significant constitutional, regulatory, fiscal, and functional shifts in the American federal system. This project is designed to review those shifts and draw implications for the future concerning how the American federal system will operate. This will be a framework study into which many other ACIR research projects in the next few years will nest. The first product will be a review of changes over the decade in terms of overall trends, and will establish the framework for a closer look at some of the most important programmatic, fiscal and procedural issues raised by those trends. The second phase of this study would consist of a series of reports on individual functions and processes of government. The third and final phase would yield a report synthesizing the findings of these studies in relation to the overall study framework.
Current Status:	Awaiting initiation.
Expected Completion:	Phase one is expected to be completed by the end of FY 1990, with other phases to follow as funding becomes available.

Project Name:	Immigration and Federalism: Costs, Civil Liberties, Foreign Policy, and Intergovernmental Tensions
Initiation:	Approved by the Commission in June 1987
Assigned Staff:	Robert D. Ebel, Bruce D. McDowell, and contractor
Description:	Under the U. S. Constitution, the federal government has complete responsibility for foreign affairs, including immigration. Yet, once immigrants have entered the country,

they place undeniable demands on the services of state and local governments. The intergovernmental relations of immigration are not smooth. The federal government recognizes responsibility for only certain classes of immigrants, although state and local governments—under Supreme Court order—must serve most of the social service demands of all immigrants. Federal support for recognized immigrants is decreasing at a time when the case loads for state and local governments are increasing for that group, as well as for groups of immigrants not recognized by the federal government. In short, the system appears to be out of balance, and this imbalance appears to be growing. The project will investigate this phenomenon, evaluate the relevant existing intergovernmental programs and relationships, and propose improvements. A Commission policy report is expected to result.

Current Status: Awaiting initiation.

Expected Completion: The Commission's policy report is expected to be completed within a year of initiation.

Project Name: The Role of General Purpose Governments in the Administration of Justice

Initiation: Approved by the Commission in June 1989

Staff Assigned: Robert D. Ebel, Bruce D. McDowell, other staff, and contractors

Description: The federal, state, and local governments all are involved in the administration of justice through a complex array of relationships involving the legislative, judicial, and executive branches of each government. The criminal justice system is under stress now, at a time when federal, state, and local government budgets also are under stress. Key characteristics of the criminal justice system are established without relation to their costs, and the elected officials of general purpose governments are left to find the necessary funds. Too often, the officials responsible for finance are left out of the decisions that create the demand for funds. This project will focus on key relationships between (1) local governments, state governments, and the federal government, (2) the legislative, executive, and judicial branches of these governments, (3) local governments within states, counties, and metropolitan areas, as well as (4) the relationships between local officials and practitioners throughout the criminal justice system. The project is expected to produce recommendations for improving the intergovernmental relations of criminal justice administration, coupled with institutional mechanisms prepared to follow through on the recommendations. A Commission policy report is expected to result.

Current Status: Awaiting outside funding and initiation.

Expected Completion: Eighteen months after initiation.

Project Name: Federal, State, and Local Compliance with Mandates: The Case of Environmental Protection

Initiation: Approved by the Commission in June 1987

Staff Assigned: Bruce D. McDowell and contractor

Description: Over the last two decades, especially, a wide array of federal and state mandates for environmental protection have grown up. In addition, a process calling for environmental impact statements has become a widely accepted means of determining how individual projects and aggregations of projects will affect the environment and how development objectives can be met without harming the environment unnecessarily or irretrievably. This project would look at the extent of federal, state, and local compliance with environmental mandates and the adequacy of the environmental evaluations and mitigation practices used to inform the intergovernmental negotiations required before development can take place. This project would be expected to produce a Commission policy report.

Current Status: Awaiting initiation.

Expected Completion: Approximately one year after initiation.

Project Name: Federalism Impact Analysis: The Federalism Executive Order, Fiscal Notes, Regulatory Relief, and Waivers for Small Governments

Initiation: Expected to be approved by the Commission in September 1989

Staff Assigned: Bruce D. McDowell and contractor

Description: The term "unfunded federal mandates" is being used increasingly by state and local governments to express their perception that federal assistance is declining while federal

	intrusiveness is increasing. Following up on previous Commission studies of several elements of this issue, the study would comprehensively examine activities under Federalism Executive Order 12612, the Congressional "Fiscal Notes" process operated by CBO, the Regulatory Flexibility Act, the regulatory relief efforts of the Reagan administration, and other similar activities. The special needs of small governments would be included. The purpose of this study would be to assess the net impact of these activities, and to suggest improvements. A Commission policy report would result.
Current Status:	Awaiting Initiation.
Expected Completion:	Approximately one year after initiation.
Project Name:	**Public Works Perspectives**
Initiation:	Expected to be approved by the Commission in September 1989
Staff Assigned:	Bruce D. McDowell
Description:	ACIR continues to distribute more than 50 working papers prepared for the National Council on Public Works Improvement. Although many of them are quite good, their current photocopy format and imposing length makes them less attractive and accessible than they should be. With continued heating up of this topic, the usefulness of these papers could be enhanced greatly by publishing them in a more accessible format. This project would identify the best 15 or so of these papers and publish them together as an ACIR information report.
Current Status:	This project was begun by the National Council on Public Works Improvement but not completed before the Council was abolished. Completion is dependent on ACIR provision of publication funds.
Expected Completion:	Within six months of approval by the Commission.
Project Name:	**State Courts and Local Autonomy**
Initiation:	Approved by the Commission in June 1987
Staff Assigned:	Bruce D. McDowell and contractor
Description:	A substantial body of state case law is beginning to grow around the issue of local government standing in state courts to challenge state limitations on local autonomy. Essentially, these cases test the limits of home rule within each state, but there is no systematic tracking of these cases across the country. Hence, the true meaning of home rule in the United States remains unknown. This project would track these cases and make the information available to a wide audience.
Current Status:	Awaiting initiation.
Expected Completion:	Approximately September 1990.
Project Name:	**Siting Locally Unwanted Land Uses**
Initiation:	Expected to be approved by the Commission in September 1989
Staff Assigned:	Bruce D. McDowell and contractor
Description:	Many essential facilities needed for the pursuit of regional, state, and national—not to mention local—objectives must be sited in local jurisdictions despite the perception, possibility, or actuality they may harm the area. The basic authority for deciding land use is held by local governments, where it is often most difficult to deal with the pressures of neighborhood and the community-wide opposition. Several approaches will be explored for resolving such siting issues. This project will produce a Commission policy report recommending the most feasible and effective means of dealing with the siting of locally unwanted land uses on an intergovernmental basis.
Current Status:	Pending approval of the Commission.
Expected Completion:	Within one year of initiation.
Project Name:	**Shifting Functions in the American Federal System**
Initiation:	Expected to be approved by the Commission in September 1989
Staff Assigned:	Bruce D. McDowell and contractor
Description:	Every five years, the U.S. Bureau of the Census counts the number of governments in the United States and tallies their functional, financial, employment, and other charac-

teristics. However, Census does not analyze this information. In the past, ACTR has provided such analysis. This project would add the time period 1977-1987 to this analysis. The Commission's 1967-1977 analysis of these data revealed a number of significant trends, and the new analysis is expected to do likewise. This project would, at a minimum, produce a significant information report, and could lead to Commission findings and policy recommendations as well.

Current Status: Awaiting initiation.

Expected Completion: Within one year of initiation.

Project Name: Strengthening State and Local Revenue Systems for Equity and Efficiency

Initiation: Proposed for initiation in fiscal year 1990 as part of a three-year program to be considered by the Commission in September 1989

Staff Assigned: Robert D. Ebel and other staff, with contractors

Description: This topic is ideally suited for a series of conferences during the next three years. The conferences could be organized solely by the ACTR or jointly with other groups,such as the 1988 NCSL-ACIR conference on state taxation of telecommunications. The products of these activities would range from the conference sessions themselves to materials for state legislative and congressional hearings, panel discussions for television and/or other video outlets, and special presentations by Commissioners. An added goal in all cases would be to publish the conference proceedings through the ACTR. Over the three-year period, this would result in a well integrated series of reports.

Because this topic would be structured as a series of activities, the Commission would have some flexibility in addressing a range of emerging issues, not all of which need to be identified immediately. However, certain issues that might be considered at this time include: (1) state and local fiscal relations: monitoring the agenda for the 1990s; (2) business taxation; (3) treatment of retirement income; (4) a federal consumption tax; and (5) constitutional limitations on state taxing authority.

Current Status: Pending approval of the Commission.

Expected Completion: Timing is subject to Commission direction.

Project Name: Local Fiscal Capacity and Fiscal Equalization

Initiation: Expected to be approved by the Commission in September 1989

Staff Assigned: Carol E. Cohen and Robert W. Rafuse, Jr., with other staff

Description: The fiscal capacity of general-purpose local governments is an important consideration in the intergovernmental system. States seek this information in order to better understand the relative fiscal well being of their local governments and to determine whether and how to provide equalizing aid to their localities. Twice before, in a 1971 report and in a 1983 unpublished paper, the ACIR has studied this topic. A number of states have also done work in this field, often building on ACIR's Representative Tax System approach. This project, which incorporates an approved, but uninitiated project of "Equity Issues and Fiscal Equalization between Local Jurisdictions," would attempt to develop improved methods for measuring local fiscal capacity that could be used by state and local fiscal analysts. It would include a survey of the literature and existing efforts to measure local fiscal capacity. The project would build on ACIR's long history with the state RTS and on a report soon to be published on the estimation of representative expenditures in the states. It would attempt to identify and resolve the special technical problems created by the large number of local governments, range of fiscal practices, and the uneven availability of the data required to measure local fiscal capacity.

Current Status: Pending approval of the Commission.

Expected Completion: Within one year of initiation.

Project Name: World Competitiveness in Telecommunications: The Critical Role of the States and Localities

Initiation: Expected to be approved by the Commission in September 1989

Staff Assigned: Robert D. Ebel, with contractors

Description: In 1987, the Commission approved a two-part study relating to the intergovernmental regulatory and state taxation aspects of telecommunications. Those projects revealed a third critical area yet to be adequately examined, viz., the role of state telecommunications regulation in promoting or constraining state economic development and international competitiveness. One question for ACIR to ask is how well the state public utility commissions are doing in regulating the telecommunications industry. These commissions have an enormous responsibility--balancing the needs of the telecommunications firms and their large business users with those of the small user, and ensuring that firms and consumers not face unfair pricing and even abandonment of some service. Nevertheless, some members of Congress and the Justice Department, along with other experts, think that the state utility commissions are not promoting the national interest in the development of telecommunications. The ACIR is ideally suited to evaluate the issues and implications of state regulation of this industry in the 1990s, and to develop findings and recommendations regarding the proper balance of state and federal interests in regulating telecommunications.

Current Status: Pending approval of the Commission.

Expected Completion: Within one year of initiation.

Project Name: **Financing Streets and Highways**

Initiation: Expected to be approved by the Commission in September 1989

Staff Assigned: Robert D. Ebel, with contractor

Description: State-local financing of highways and streets is rapidly becoming the hottest fiscal issue of the 1990s. Completion of the interstate highway system, congressional deliberation over the next piece of federal highway legislation, new technologies for measuring the use and deterioration of roads, and growing concern about traffic gridlock in many parts of metropolitan America all provide a clear opportunity for the ACIR to examine the present status and long-run options for federal, state, and local financing of the nation's roads and highways. Such a study would complement the Commission's earlier work on *Devolving Selected Federal-Aid Highway Programs and Revenue Bases: A Critical Appraisal*. Key areas requiring examination include: (1) federal-state-local financing responsibilities; (2) user vs. general fund finance; and (3) fee structures.

Current Status: Pending approval of the Commission.

Expected Completion: Within one year of initiation.

Project Name: **State Taxation of Insurance**

Initiation: Expected to be approved by the Commission in September 1989

Staff Assigned: Robert D. Ebel, with contractor

Description: The manner in which the states tax insurance companies provides a classic intergovernmental example of the complex interaction of changing economic circumstances and existing legal arrangements. This is the result of the tensions between the requirements of the commerce clause (which prohibits states from enacting laws to restrict interstate commerce) and specific federal legislation limiting the reach of that clause to insurance activities, and the growing legal and economic pressures for providing for tax parity both within the insurance industry and between the industry and other types of business activities. This combination of circumstances gives rise to key issues of interstate commerce, financial competition, and deregulation.

A research project on state taxation of insurance would provide a thorough review and analysis of these issues, and then provide the Commission with a range of policy options directed to the Congress as well as to the states.

Current Status: Pending approval of the Commission.

Expected Completion: Within 15 months of initiation.

III. Possible Future Research Projects

The Commission is completing a review of its present and future work programs. It is likely that the continuing projects will remain in place and be augmented by one, but the topical research projects will probably reflect some new directions in both our public finance studies and our more general government policy research. Projects likely to be included in the Commission's three-year work program for initiation after FY 1990 include the following:

Government Finance Research

- The Interplay of Federal and State-Local Tax Reform: Implications for Low-Income Families
- Interjurisdictional Tax and Policy Competition: Metropolitan Case Studies
- State-Local Revenue Sharing and State Aid to Cities and Counties
- State Business Climates: Measurement and Efficacy
- Use of Major State-Local Tax Bases: Implications for Size of Public Sector and Incidence of the Tax Burden
- The Property Tax in a Changing Fiscal Environment

Government Policy Research

- Home Rule: A Survey of Local Usage
- State Assumption of Local Functions
- Intergovernmental Personnel Policy: Portable Public Service Careers and Pensions
- Presidential Management of Intergovernmental Relations
- Statewide Information and Data Networks
- Antitrust Policy in the Federal System
- The Role of the National Guard in Protecting the Nation and the States
- Coordinating Governments in the Federal System for Effective Drug Abuse Law Enforcement
- Housing Assistance in the American Federal System
- Welfare Reform in the Intergovernmental System: How Well Is It Working?
- Child Care in the American Federal System
- Enterprise Zones in the American Federal System
- Tribal Governments in the American Federal System

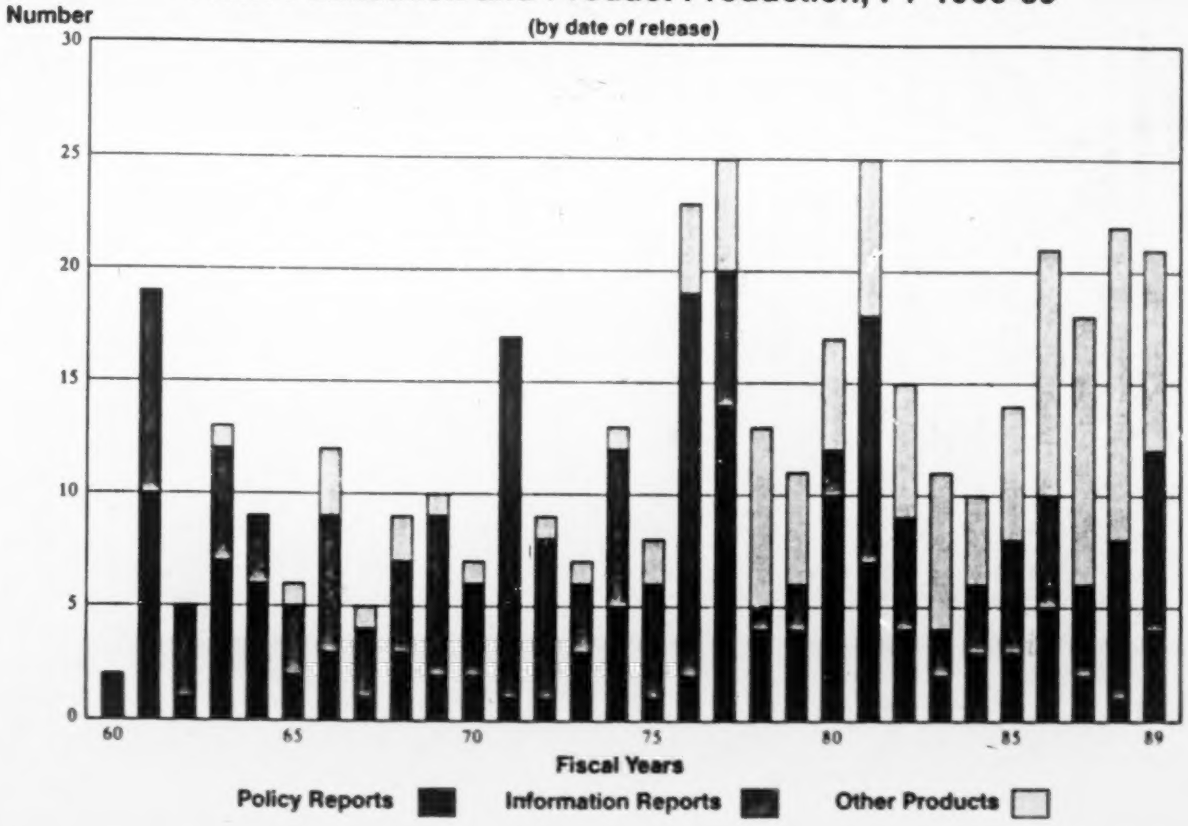
Conferences

- State-Local Relations: A Reconnaissance of Salient Issues
- Solid and Hazardous Waste Management
- Improving Educational Outcomes
- Intergovernmental Approaches to Work Force Preparation
- Federal Grant Formulas: Matching Variables and Structures to Objectives
- Benefit Capture and Financing of Local Governments

Appendix B

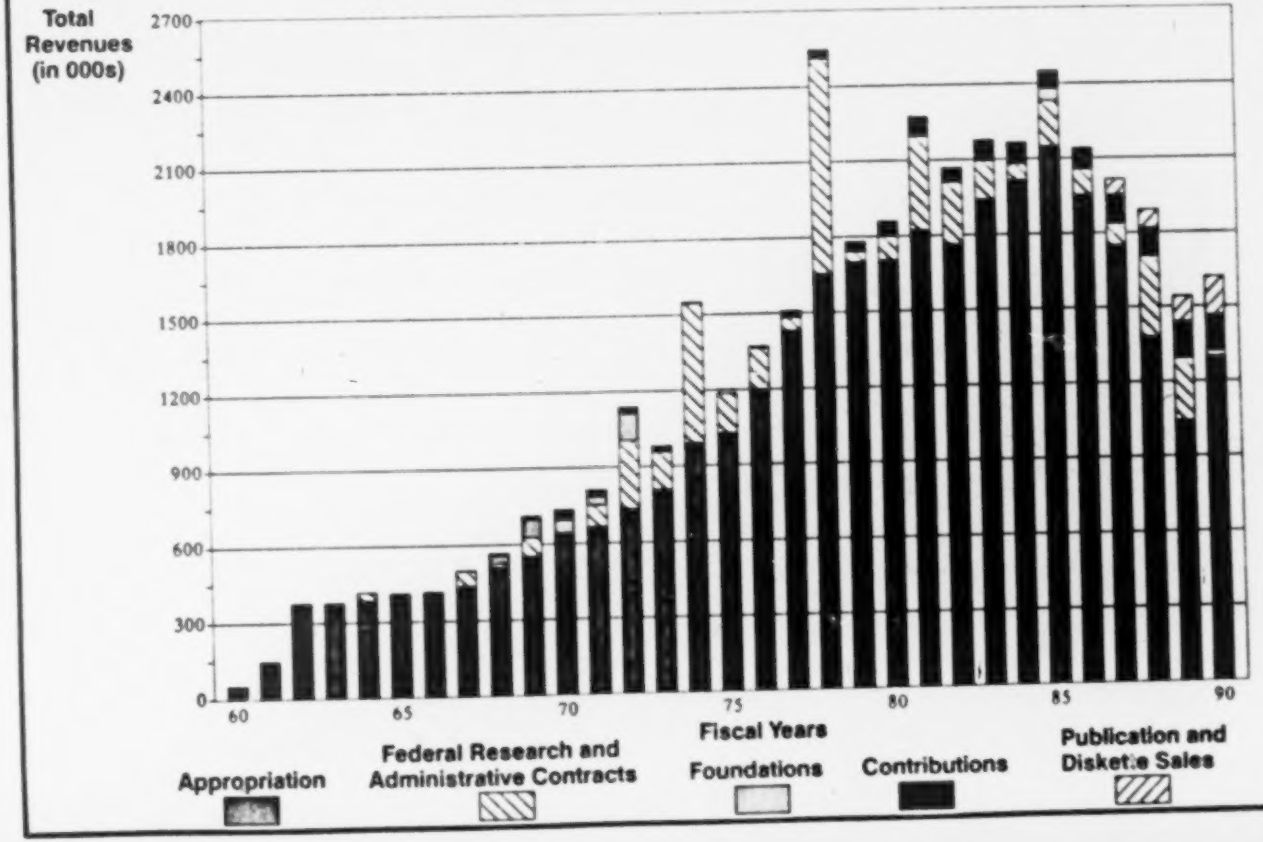
ACIR Publication and Product Production, FY 1960-89

(by date of release)



Appendix C1

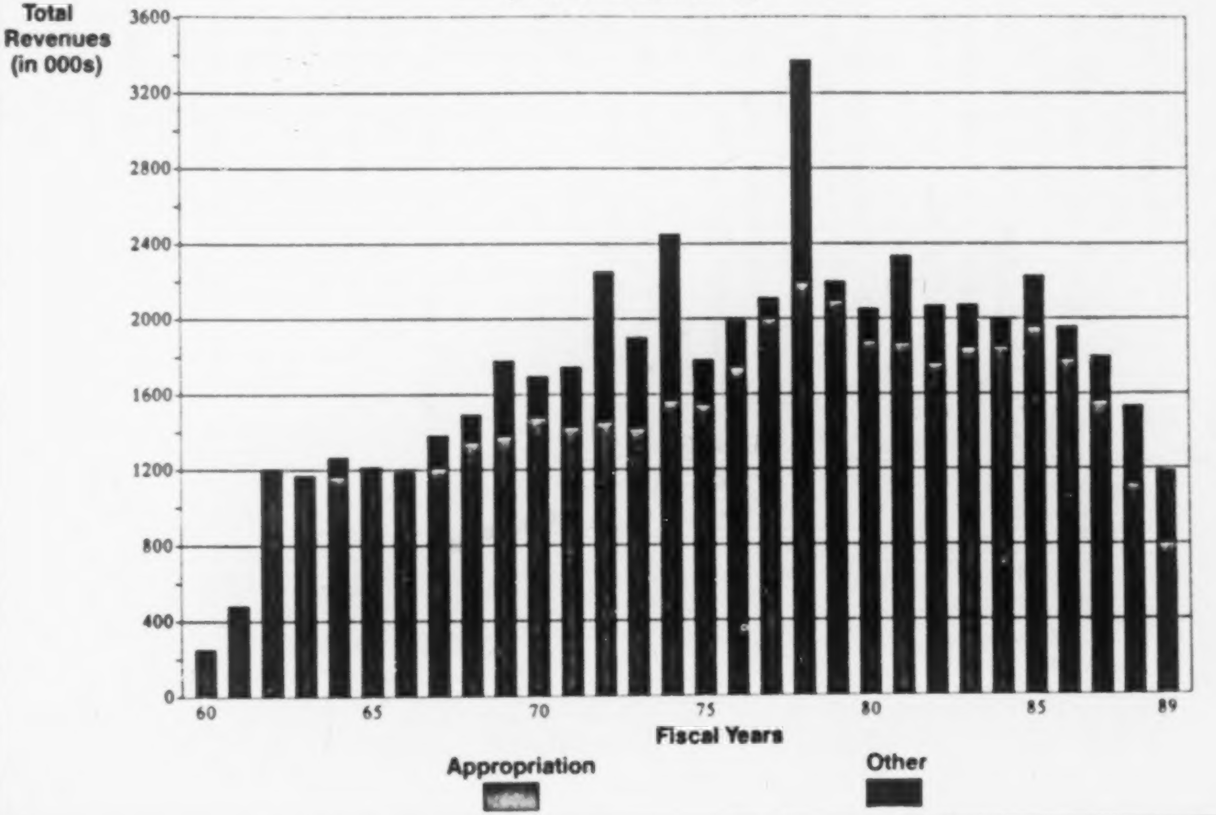
ACIR Revenue History, FY 1960-90



Appendix C2

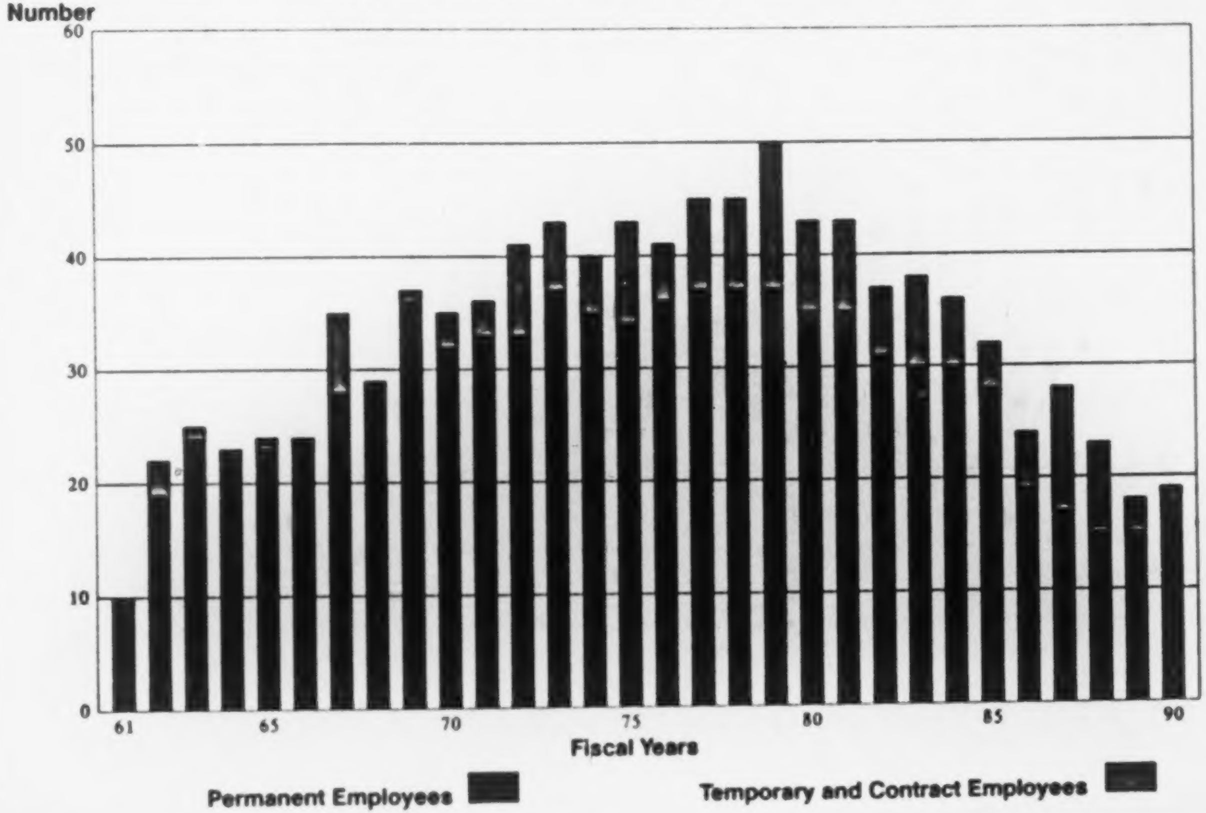
ACIR Revenue History, FY 1960-89

(in constant 1982 dollars)



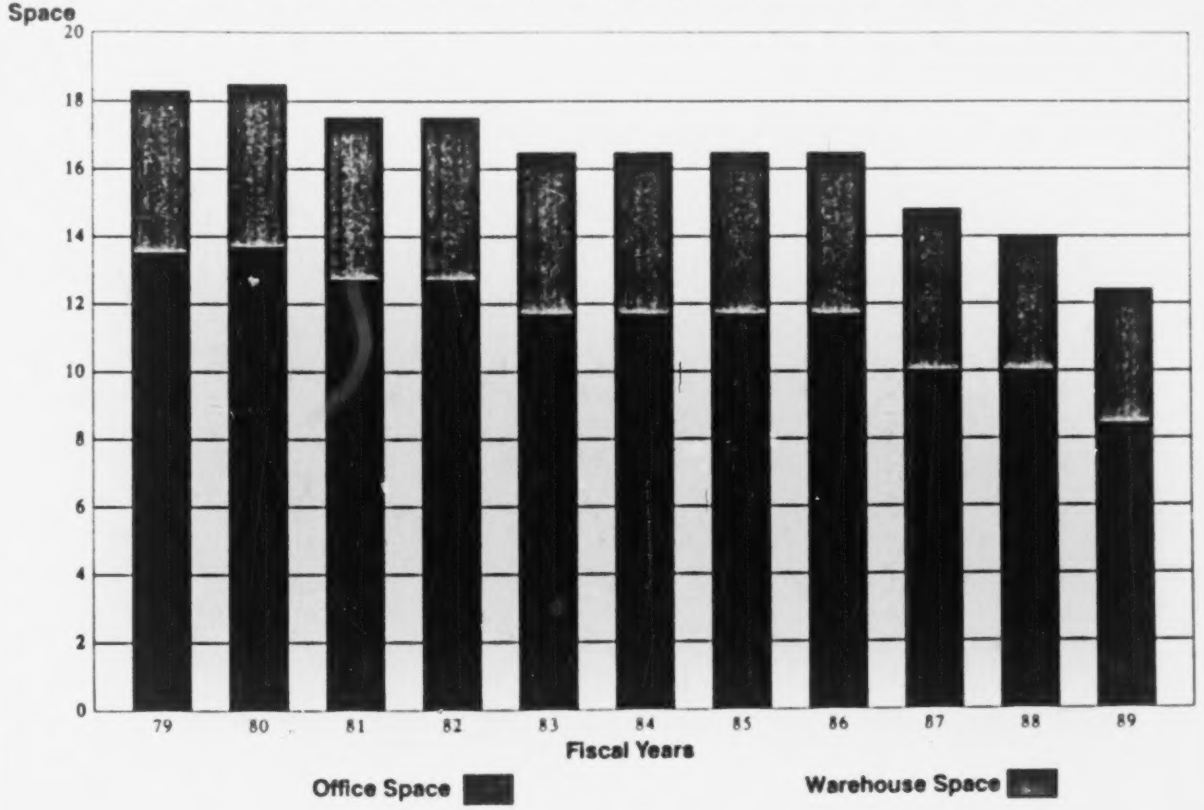
Appendix D

ACIR Personnel History, FY 1961-90



Appendix E

ACIR Office and Warehouse Space History, FY 1979-89



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

BUDGET REQUEST FOR FISCAL YEAR 1991

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Budget Request and Justification for Fiscal Year 1991

1990	Salaries and Expense Appropriation	$1,300,000	
	Indicated Change		-0-
1991	Salaries and Expense Appropriation Request		$1,300,000

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Advisory Commission on Intergovernmental Relations Act of 1959, as amended, 42 U.S.C. 4271-79, [$1,300,000], and additional amounts not to exceed $200,000, collected from the sale of publications shall be credited to and used for the purposes of this appropriation. *(Independent Agencies Appropriations Act, 1990.)* $1,300,000

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Federal Funds

General and special funds:

SALARIES AND EXPENSES

The Advisory Commission on Intergovernmental Relations (ACIR) is a 26-member independent, bipartisan body. The Commission and its staff examine Federal, state, and local trends, events, programs, and finances that affect intergovernmental relations. On request, proposed legislation and executive actions are reviewed to determine their overall effect on the federal system. The Commission also identifies emerging problems of Federal-state-local relations and assists states and localities in anticipating and meeting problems caused by various intergovernmental overlaps and conflicts, and makes recommendations concerning the workings and structural arrangements of governmental units and allocation of responsibilities and revenues among the various levels of government. The recommendations and published reports growing out of the Commission's work are submitted to the executive and legislative branches of Federal, state, and local governments for appropriate action.

Continuing and annual projects of the Commission include assessing the changing public attitudes on governments and taxes; publishing annual data on the "representative tax system" for all 50 states; analyzing fiscal disparities; publishing a periodic catalog of federal aid; surveying and identifying trends in state and local finances; monitoring key intergovernmental legislation of federal, state, and local governments; and providing educational and technical assistance to Federal, state, and local governments regarding Commission recommendations.

Nonrecurring projects completed or nearing completion include studies of state constitutional law in the federal system, Federal preemption of state authority, criteria and mechanisms for Federal mandate reimbursements, local governance and service provision in fragmented metropolitan areas, residential community associations, intergovernmental aspects of public welfare, balance in the federal system, interjurisdictional tax and policy competition, state regulation of banks, local revenue diversification, and state ground-water management.

Other nonrecurring research projects under way or being initiated include state and local international trade and investment programs, state taxation and regulation of telecommunications, and state taxation of interstate banking.

Appropriations finance the personnel and personnel-related expenses incurred in the basic day-to-day operations of the Commission.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES
Program and Financing (in thousands of dollars)

55-1100-0-1-808		89	90	91
	Program by activities:			
	Direct Program:			
00.01	General administration	345	373	380
00.02	Intergovernmental research	695	912	920
00.91	Total direct program	1,040	1,285	1,300
01.01	Reimbursable program	90	75	85
10.00	Total Obligations	1,130	1,380	1,385
	Financing:			
	Offsetting collections from:			
11.00	Federal funds	-15	-15	-15
14.00	Non-Federal sources	-75	-80	-70
39.00	**Budget authority**	1,040	1,285	1,300
	Budget authority:			
40.00	Appropriation	1,040	1,300	1,300
40.00	Reduction pusuant to P.L. 99-177 ...	. . .	-15	. . .
43.00	**Appropriation (adjusted)**	1,040	1,285	1,300
	Relation of obligations to outlays:			
71.00	Obligations incurred, net	1,040	1,285	1,300
72.40	Obligated balance, start of year	404	185	208
74.40	Obligated balance, end of year	-185	-208	-210
77.00	Adjustment in expired accounts	-11	. . .	. . .
90.00	Outlays	1,248	1,282	1,298

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES
Object Classification (in thousands of dollars)

		89	90	91
55-1100-0-1-806				
	Direct obligations			
	Personnel compensation:			
11.1	Full-time permanent	641	765	780
11.3	Other than full-time permanent	4	4	4
11.5	Other personnel compensation	14	. . .	. . .
	Total personnel compensation	659	769	784
12.1	Civilian personnel benefits	122	154	165
	Unemployment benefits	14	. . .	. . .
	Travel and Transportation of persons:			
21.0	Staff Travel	11	10	10
21.0	Commission Travel	6	. . .	. . .
21.0	Invitational Travel	15	6	5
22.0	Transportation of things	6	8	9
23.1	Rental payments to GSA	173	200	200
23.2	Communications, utilities, and miscellaneous charges	. . .	53	83
25.0	Other services	26	35	43
26.0	Supplies and materials	3	50	. . .
31.0	Equipment	5	. . .	. . .
99.0	Subtotal, direct obligations	1,040	1,285	1,300
11.1	Full-time permanent	13	13	22
12.1	Civilian personnel benefits	2	2	3
21.0	Travel	. . .	. . .	. . .
23.1	Rental payments to GSA	75	60	60
25.0	Other services	. . .	. . .	. . .
26.0	Supplies and materials	. . .	. . .	. . .
99.0	Subtotal, reimbursable obligations	90	75	85
99.00	Total obligations	1,130	1,360	1,385

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES
Personnel Summary

55-1100-0-1-806	89	90	91
Direct:			
Total number of full-time permanent positions	15	18	18
Total compensable work years:			
Full-time equivalent employment	2	...	...
Reimbursable:			
Total compensable work years:			
Full-time equivalent employment:	...	1	1

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES
Average Grades and Salaries

	89	90	91
55-1100-0-1-806			
Direct:			
Average IR grade	12.7	12.7	12.8
Average IR salary	$45,550	$45,714	$47,360

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Trust Funds

CONTRIBUTIONS

In FY 1989, these trust funds were, for the first time in ACIR's history, used to underwrite basic Commission research.

Normally, contributions from state and local governments and nonprofit organizations are used to strengthen the Commission's clearinghouse, information and policy education services to state and local governments, and to improve intergovernmental coordination and relations. Specific items financed by this account include the Commission's quarterly publication, *Intergovernmental Perspective*; printing of Commission reports; summaries of full Commission reports published as the *In Brief* series; and reprints of popular out-of-print but timely Commission reports.

In FY 1989 the Commission initiated contract research with individual states.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
TRUST FUND (CONTRIBUTIONS)
Program and Financing (in thousands of dollars)

		89	90	91
55-1100-0-1-806				
	Program by activities:			
10.00	Total obligations	612	243	150
	Financing:			
	Offsetting collections from:			
17.00	Recovery of prior year obligations	-27	. . .	. . .
21.40	Unobligated balance available, start of year	-178	-56	-56
24.40	Unobligated balance available, end of year	56	56	56
60.00	**Budget authority (appropriation)** (permanent, indefinite)	463	243	150
	Relation of obligations to outlays:			
71.00	Obligations incurred, net	612	243	150
72.00	Obligated balance, start of period	34	214	38
74.00	Obligated balance, end of period	-214	-38	-38
78.00	Adjustments in unexpired accounts	-27	. . .	. . .
90.00	Outlays	405	419	150

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
TRUST FUND (CONTRIBUTIONS)
Object Classification (in thousands of dollars)

		89	90	91
55-1100-0-1-806				
11.1	Full-time permanent	25	...	...
	Total personnel compensation ..	25	...	...
12.1	Civilian personnel benefits	5	...	...
21.0	Staff Travel	11	10	10
21.0	Commission Travel	28	22	25
21.0	Invitational Travel	4	5	5
23.2	Communications, utilities, and miscellaneous charges	94		
24.0	Printing and reproduction	138	77	54
25.0	Other services	266	103	30
36.0	Supplies and materials	27	26	26
31.0	Equipment	14	...	...
90.0	Total obligations	612	243	150

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES

	89	90	91
55-1100-0-1-806			
Executive Level V	1	1	1
IR-18	...	...	...
IR-17	...	...	...
IR-16	2	2	2
IR-15	1	1	1
IR-14	1	1	1
IR-13	3	4	4
IR-12	2	1	1
IR-11	1	1	1
IR-10	...	...	...
IR-9	...	...	...
IR-8	3	3	3
IR-7	...	1	1
IR-6	1	1	1
IR-5	...	1	1
Total permanent positions	15	17	17
Temporary	...	...	...
Unfilled positions, end of period	...	...	...
Total FTE end of period	...	...	...

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Agency Expenditure for Civilian Benefits

FY 1989

Description	Number of Personnel	Pre-1983 Retirement	Post-1983 Retirement	Medicare	FICA	Thrift Savings	Total
Civil Service Retirement System	7	$24,143	$1,602	$4,342			$30,087
Federal Employees Retirement System	8		$39,146		$22,481	$8,454	$70,081
			FY 1990				
Civil Service Retirement System	8	$25,050	$1,660	$4,710			$31,420
Federal Employees Retirement System	11		$40,403		$24,342	$8,729	$73,474
			FY 1991				
Civil Service Retirement System	8	$25,952	$1,720	$4,880			$32,552
Federal Employees Retirement System	11		$41,858		$25,218	$9,043	$76,119

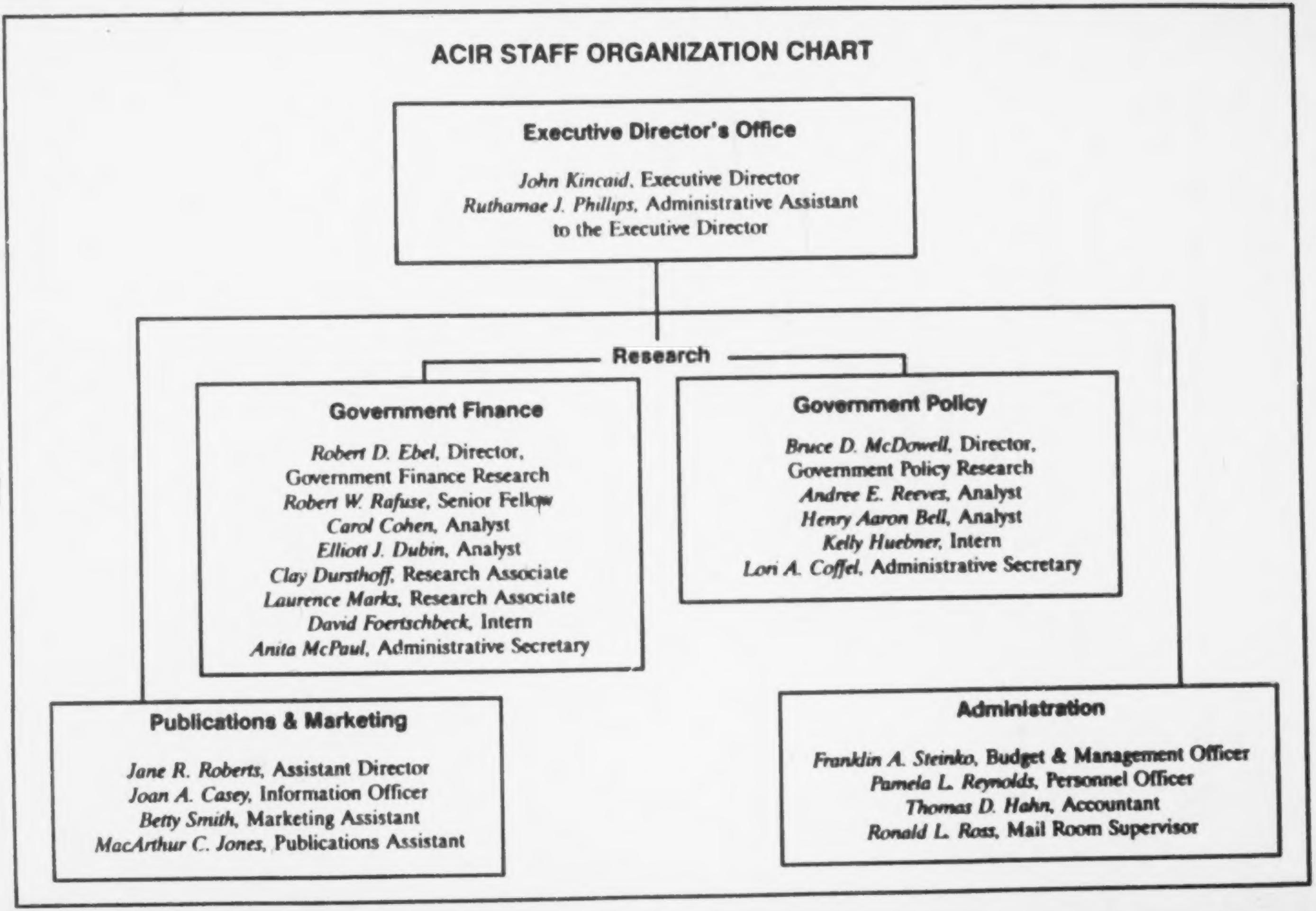
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Permanent Staff

Kincaid, John, Executive Director
Ebel, Robert D., Director, Government Finance Research
McDowell, Bruce D., Director, Government Policy Research

Casey, Joan, Information Officer
Hahn, Thomas D., Accountant
Jones, MacArthur C., Publications Assistant
Carol Cohen, Analyst
Coffel, Lori A., Secretary
Phillips, Ruthamae A., Administrative Assistant to the
Executive Director
McPhaul, Anita J., Administrative Secretary
Reynolds, Pamela L., Personnel Officer
Roberts, Jane F., Assistant Director of
Communications & Publications
Ross, Ronald L., Mail Room Supervisor
Smith, Betty, Marketing Assistant
Steinko, Franklin A., Jr., Budget and
Management Officer



ACIR STAFF ORGANIZATION CHART

Executive Director's Office

John Kincaid, Executive Director
Ruthamae J. Phillips, Administrative Assistant
to the Executive Director

Research

Government Finance

Robert D. Ebel, Director,
Government Finance Research
Robert W. Rafuse, Senior Fellow
Carol Cohen, Analyst
Elliott J. Dubin, Analyst
Clay Dursthoff, Research Associate
Laurence Marks, Research Associate
David Foertschbeck, Intern
Anita McPaul, Administrative Secretary

Government Policy

Bruce D. McDowell, Director,
Government Policy Research
Andree E. Reeves, Analyst
Henry Aaron Bell, Analyst
Kelly Huebner, Intern
Lori A. Coffel, Administrative Secretary

Publications & Marketing

Jane R. Roberts, Assistant Director
Joan A. Casey, Information Officer
Betty Smith, Marketing Assistant
MacArthur C. Jones, Publications Assistant

Administration

Franklin A. Steinko, Budget & Management Officer
Pamela L. Reynolds, Personnel Officer
Thomas D. Hahn, Accountant
Ronald L. Ross, Mail Room Supervisor

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND (CONTRIBUTIONS)

State Contributions Received

State	Amount
Alaska	$5,000.00
Arkansas	6,000.00
California	13,000.00
Colorado	6,000.00
Connecticut	3,000.00
Delaware	5,000.00
Florida	3,000.00
Hawaii	1,000.00
Indiana	7,000.00
Kansas	6,000.00
Kentucky	6,000.00
Maryland	6,000.00
Michigan	11,400.00
Minnesota	3,000.00
Missouri	7,000.00
New Hampshire	5,000.00
New Jersey	7,000.00
New Mexico	4,900.00
New York	20,000.00
North Carolina	3,000.00
North Dakota	2,500.00
Ohio	8,000.00
Oklahoma	6,000.00
Pennsylvania	9,000.00
Rhode Island	5,000.00
South Carolina	6,000.00
Tennessee	6,000.00
Virginia	7,000.00
Washington	2,200.00
Wisconsin	2,250.00
30 States	$182,250.00

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND (CONTRIBUTIONS)

Honorariums Received

Payee Amount	Amount
American Society for Public Administration	$200.00
Pennsylvania State Association of Boroughs	200.00
Pennsylvania Economy League, Inc.	200.00
Total	$600.00

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Reimbursable Program Reimbursements by Object Classification

Object Classification Payee		Amount
11.1	**Full-time permanent**	
	Harry S. Truman Scholarship Foundation	15,000.00

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Reimbursable Program Receipts

Agency:	Harry S. Truman Scholarship Foundation
Amount:	$15,000
Time Frame:	October 1, 1988, to September 30, 1989
Purpose:	Administrative Services

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Direct Program
Object Classification Net Change Justification– FY 1990-91

Object Classification	FY 1990	FY 1991	Net Change
Personnel Compensation:			
11.1 Full-time permanent	765	780	+15
Full-time permanent staff will be brought up to OMB ceiling and filled throughout FY 1990. $15,000 more is needed in FY 1991 because of step increases.			
11.3 Other than full-time	4	4	–
This category covers our use of part-time temporaries on regular staff, Commission member salaries, and short-term temporary personnel to work on special projects.			
TOTAL PERSONNEL COMPENSATION	769	784	+15
12.1 Personnel Benefits: Civilian	154	165	+11
Increases in Social Security and Medicare payments necessitate the increase.			
21.0 Travel and transportation of persons	16	15	-1
Commission and staff travel will again be funded partially by the trust fund.			
22.0 Transportation of things	8	9	+1
Anticipated price increases account from a minimal increase.			
23.1 Rental payments to GSA	200	200	+
ACIR should be in its new location under a new lease.			
23.2 Communications, utilities, and miscellaneous charges	53	83	+30
It is anticipated that maintenance agreement cost reductions will offset GSA increases in other areas. $30,000 in expenditures wll be paid from the Trust Fund in FY 1990.			
24.0 Printing and reproduction	...	...	–
The trust fund will finance publication production in FY 90 and FY 91.			
25.0 Other services	35	43	+8
The trust account will fund $30,000 in contract research in FY 90 and FY 91. In FY 91 there will be a combined (S&E and Trust Fund) decrease of $26,000.			
26.0 Supplies and materials	50	...	-50
The trust account will fund supply expenditures in FY 1991.			
99.0 Total Direct Obligations	1,285	1,300	+15

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Invitational Travel

Payee	Amount	Purpose
Omega-M. Bell	$284.00	Arizona State-Local Tax Study
P. Galie	231.00	Study of State Constitutional Law
S. McCray	500.00	Telecommunications Policy Research Conference
D. Skover	423.00	Study of State Constitutional Law
E. Katz	199.30	Study of State Constitutional Law
M. Libonati	74.60	Study of State Constitutional Law
S. Percy	307.90	Critics' Session on Disability Rights Mandates
R. Williams	48.95	Study of State Constitutional Law
C. Conway	207.29	Thinkers' Session on The State and Intergovernmental Affairs
R. Oakerson	815.00	Allegheny County Study
M. Porter	556.00	Study of State Constitutional Law
R. Williams	188.80	ACIR Commission Meeting
S. Percy	370.90	ACIR Commission Meeting
V. Munley	168.00	Thinkers' Session on Public School Finance
G. Tarr	96.65	Study of State Constitutional Law
T. Collins	595.30	Thinkers' Session on State Taxation of Telecommunications
M. Goretz	99.00	Thinkers' Session on Public School Finance
R. Berne	245.70	Thinkers' Session on Public School Finance
E. Katz	123.38	ACIR Commission Meeting
F. Siska	541.75	ACIR Monitoring and Working Group on State Taxation and Regulation of Banks
S. McCray	252.35	6th Annual Telecommunications Conference
J. James	527.00	ACIR Monitoring and Working Group on State Taxation and Regulation of Banks
S. Gold	418.75	ACIR Monitoring and Working Group on State Taxation and Regulation of Banks
P. Kiely	368.12	ACIR Monitoring and Working Group on State Taxation and Regulation of Banks
K. Biederman	554.90	ACIR Monitoring and Working Group on State Taxation and Regulation of Banks
W. Blomquist	479.00	Review Session on Groundwater Management
C. Boettcher	427.00	Thinkers' Session on the Clearinghouse on Competitiveness
W. Fox	489.06	ACIR Monitoring and Working Group on State Taxation and Regulation of Banks
D. Pilcher	471.63	Thinkers' Session on a Plan for a National Clearinghouse of Federal, State, and Local Initiatives to Enhance America's Competitiveness in World Markets
F. Steinko	319.62	Thinkers' Session on the Clearinghouse on Competitiveness
S. Turner	406.80	Thinkers' Session on a Plan for a National Clearinghouse of Federal, State, and Local Initiatives to Enhance America's Competitiveness in World Markets
H. McDowell	324.79	Thinkers' Session on a Plan for a National Clearinghouse of Federal, State, and Local Initiatives to Enhance America's Competitiveness in World Markets
L. Graglia	681.58	ACIR Commission Meeting
C. Boettcher	300.00	Thinkers' Session on the Clearinghouse on Competitiveness
W. Lord	481.06	Review Session on Ground Water Management
J. Baker	447.00	Review Session on Ground Water Management
R. Oakerson	630.50	Critics Session on Allegheny County Case Study
M. Schneider	308.85	Critics Session on Allegheny County Case Study
R. Parks	473.46	Critics Session on Allegheny County Case Study
D. Elliott	533.50	Critics Session on Allegheny County Case Study
R. Lawton	297.29	Critics Session on Allegheny County Case Study
Total	**$15,268.78**	

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

ALL ACCOUNTS

Personal Services Product Contracts

Contractor	Order	Amount	Time Frame	Account
B. Lipman	11/08/89	$52,000.00	11/14/88-11/13/89	Trust Fund
A. Richter	03/08/89	5,500.00	03/01/89-09/30/89	Trust Fund
E. Kelly	03/16/89	5,000.00	04/20/89-06/30/89	Trust Fund
S. Rood	03/13/89	5,000.00	04/20/89-06/30/89	Trust Fund
K. Susskind	03/13/89	5,000.00	04/20/89-06/30/89	Trust Fund
R. Maffin	04/03/89	5,000.00	06/16/89-08/04/89	Trust Fund
B. Case	05/08/89	13,100.00	06/01/89-09/29/89	Trust Fund
M. Goldsmith	03/28/89	5,000.00	03/28/89-07/18/89	Trust Fund
M. Carroll	05/11/89	10,200.00	05/22/89-09/30/89	Trust Fund
L. Noiset	06/06/89	3,000.00	06/19/89-08/19/89	Trust Fund
M. Bell	05/08/89	13,000.00	06/11/89-09/29/89	Trust Fund
M. Carroll	09/27/89	1,610.00	09/30/89-12/30/89	Trust Fund
C. Dursthoff	09/12/89	10,000.00	09/14/89-12/31/89	S&E
D. Foertschbech	09/05/89	3,750.00	09/11/89-12/11/89	S&E
Total		$137,160.00		

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Equal Employment

Over the last 13 years, the number of staff employed by the Advisory Commission on Intergovernmental Relations has decreased from 36 permanent employees in 1976 to 15 in FY 1988. The 58% reduction in staff size during that period left very few opportunities to recruit minorities and women. For lack of funding, few positions are being filled as staff members resign or retire.

In FY 1988, there were 18 permanent employees on the staff of the Commission. In FY 1989, that number has decreased to 15. There were three changes in the composition of the ACIR staff during this period. White males decreased from six to five, and white professional females decreased from four to three.

From FY 1988 to FY 1989, the number of secretarial/support staff was reduced from five to four—three black females and one white female, a reduction of one black female. ACIR continues to have one black male technician/supervisor and one black male technician.

Level	Blacks		White		Asian Americans		American Indian	
	M	F	M	F	M	F	M	F
Full-Time Professional	–	1	5	3	–	–	–	–
Technician/Supervisory	1	–	–	–	–	–	–	–
Technician	1	–	–	–	–	–	–	–
Secretarial	–	3	–	1	–	–	–	–

Operating Cost: Because of the small size of the staff and the overlapping duties within the administrative services section, no records are maintained of time spent on EEOC expenditures. Less than 1% of the time of each of three EEOC coordinators is spent on EEOC. This involves fulfilling reporting requirements, attending meetings, and keeping up to date on changes in EEOC rules and regulations.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

ALL ACCOUNTS

Publication Costs (including estimates)

Title	Pages	Press Run	Print Cost**
Intergovernmental Perspective:			
"Judicial Federalism," Summer 1989, Vol. 15, No. 3	40	22,093	10,930
"Changing patterns of Finance & Governance," Spring 1989, Vol. 15, No. 2	36	22,093	$9,204
"Metropolitan Governance," Winter 1988, Vol. 15, No. 1	40	22,093	$10,095
"Federalism-A Balancing Act," Fall 1988, Vol. 14, No. 4	28	22,093	$7,095
"Intergovernmental Change in the 80's," Summer 1988, Vol. 14, No. 3	28	22,093	$7,210
State Constitutions in the Federal System: Selected Issues and Opportunities for State Initiatives (A-113)	132	1,500	3,593
Residential Community Associations: Private Governments in the Intergovernmental System? (A-112)	132	3,410	$3,741
Disability Rights Mandates: Federal and State Compliance with Employment Protections and Architectural Barrier Removal (A-111)	140	1,500	**
State Regulation of Banks in an Era of Deregulation (A-110)	40	2,397	$1,617
Residential Community Associations: Questions and Answers for Public Officials (M-166)	44	1,500	1,101
1986 State Fiscal Capacity and Effort (M-165)	128	1,500	$1,960
Hearings on Constitutional Reform of Federalism: Statements by State and Local Government Association Representatives (M-164)	60	2,410	$1,304
Significant Features of Fiscal Federalism, 1989 Edition, Volume II (M-163)	229	2,000	5,795
Significant Features of Fiscal Federalism 1989, Edition, Volume I (M-163)	152	2,910	$4,378
Federal Preemption of State Banking Authority: Good or Bad for the Nation's Dual Banking System? A Roundtable Discussion (M-162)	36	2,410	$1,152
Assisting the Homeless: State and Local Responses in an Era of Limited Resources (M-161)	164	2,307	$3,317
Devolution of Federal Aid Highway Programs: Cases in State-Local Relations and Issues in State Law (M-160)	60	1,500	
State Constitutional Law: Cases and Materials (M-159)	484	2,000	$11,521
Local Revenue Diversification: Local Sales Taxes (SR-12)	56	1,500	
Readings in Federalism: Perspectives on a Decade of Change (SR-11)	140	1,909	$2,581
Changing Public Attitudes on Government and Taxes: 1989 (S-18)	44	1,500	2,294

**Unbilled by the Government Printing Office.

THURSDAY, MARCH 29, 1990.

OFFICE OF GOVERNMENT ETHICS

WITNESSES

DONALD E. CAMPBELL, ACTING DIRECTOR, OFFICE OF GOVERNMENT ETHICS

F. GARY DAVIS, GENERAL COUNSEL

ROBERT E. LAMMON, ADMINISTRATIVE OFFICER

Mr. ROYBAL. The Committee will now hear from the Office of Government Ethics. I ask Mr. Campbell to proceed in any manner that you may desire.

Mr. CAMPBELL. All right. Thank you, Mr. Chairman. The statement that we prepared, I request that it be placed in the record. I have a few brief comments.

Mr. ROYBAL. All right. Without objection, the entire statement will be in the record at this point.

[The information follows:]

FOR RELEASE ON DELIVERY
Expected at 10:00 a.m. EST
March 29, 1990

STATEMENT OF

DONALD E. CAMPBELL
ACTING DIRECTOR
OFFICE OF GOVERNMENT ETHICS

BEFORE

THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT

OF

THE COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

ON

FISCAL YEAR 1991 APPROPRIATIONS REQUEST
FOR THE OFFICE OF GOVERNMENT ETHICS

MARCH 29, 1990

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate your invitation to appear before this subcommittee to discuss the President's request for appropriations for the Office of Government Ethics for Fiscal Year 1991. Under our 1988 reauthorization by Public Law 100-598, OGE became a separate agency in the executive branch on October 1, 1989, with an authorized annual appropriation ceiling of $3.5 million through FY 1994. The FY 1991 budget request which I am submitting has already reached that ceiling and will still leave at least seven of our authorized 53 full-time equivalency employee positions vacant. Therefore, I have, by separate communication, initiated an urgent dialogue with the Office of Management and Budget, which would seek Congressional approval to raise our appropriation ceiling, in light of unanticipated increases in salaries and in the expenses of operating as a separate agency.

Since my predecessor's budget testimony before this subcommittee in March 1989, unprecedented new responsibilities have been thrust upon OGE by Executive Order 12674 and the Ethics Reform

Act of 1989. These requirements are in addition to the new functions which we had been given by our 1988 reauthorization. While we welcome all of these new opportunities, our operating expenses have risen accordingly, and will continue to do so. New and expanded agendas for training, monitoring of agency ethics programs, and regulatory implementation of statutes and executive orders necessitate staffing with personnel of greater expertise, a more frequent travel schedule, and new training publications and audiovisual aids. This, along with general salary increases, translates into significant unanticipated expenditures.

OGE's traditional role since its establishment in 1978 has entailed promulgation of regulations on standards of conduct, post-government employment, and financial disclosure; review of public financial disclosure statements for certain Presidential nominees and the administration of all executive branch blind trusts; education and training for agency ethics officials and the public; written and oral interpretive assistance with ethics statutes and regulations; and monitoring of agency ethics programs to insure compliance and basic uniformity.

The **1988 reauthorization** sharpened OGE's focus on enforcement and monitoring, by requiring annual agency reports to OGE, biennial OGE reports to Congress, our monitoring of agency criminal referrals to the Department of Justice, and the establishment of a formal mechanism for OGE to order and monitor corrective action for ethics deficiencies in agency programs and individual executive branch employees.

In April 1989, **Executive Order 12674** set in motion a series of major regulatory initiatives for OGE, requiring it to overhaul standards of conduct for the entire executive branch and then to approve agency addenda regulations; to provide new regulatory guidance for applying the criminal conflict of interest statutes; and to reestablish a system of confidential financial disclosure. Additionally, that Order mandated an expanded executive branch training program by requiring OGE to promulgate a new ethics manual and to coordinate annual agency training plans.

Late last fall, the **Ethics Reform Act of 1989** extensively revised existing statutes and added new ethics programs, which we have barely begun to implement.. As a result of its enactment, OGE will be issuing regulations to revise the entire public financial disclosure system and to provide guidance on the post-government employment restrictions; new regulations providing exemptions and guidance under the basic conflict of interest statute, 18 U.S.C. §208; new regulations on gifts; and new regulations on outside earned income, honoraria, and outside employment. We will also be managing three new executive branch programs, and coordinating their regulatory implementation. The first involves reviewing requests for and issuing divestiture certificates which provide tax relief for assets required to be disposed of in order for employees to avoid conflicts. The second new program will require us to collect and make publicly available copies of agency waivers granted to employees under 18 U.S.C. §208(b)(1) and (b)(3). Finally, we will begin collecting and making publicly available semiannual agency reports of outside reimbursements for official travel. By separate legislation, OGE will also assume responsibility on June 1, 1990, over regulations implementing provisions of the Federal Procurement Policy Act as it relates to procurement integrity in the areas of gratuities, seeking private employment, and post-government employment.

These new responsibilities and programs will generate a long-term need for more sophisticated and more frequent educational efforts, interpretative assistance to agencies, and monitoring of agency ethics programs. The Fiscal Year 1991 budget request which I am submitting will only partially accommodate these programmatic changes; however, it reaches our statutory ceiling for authorized annual appropriations. Specifically, I am asking for an appropriation of $3.5 million, 74% of which is for personnel compensation and benefits. From Fiscal Year 1990, this budget includes only a very modest overall increase of $86,000, primarily to allow for new training materials and aids, and to permit more frequent travel to accomplish both training and agency audits.

As I indicated, this budget reaches our statutory ceiling, yet it still represents a shortfall of at least seven authorized FTE positions unfilled. Without those additional staff members, the Office of Government Ethics simply cannot adequately meet the expanding scope of our mission. The quality and frequency of our educational efforts and agency audits will suffer, and full regulatory implementation of last year's executive order and reform legislation may be delayed.

I urge your approval of our FY 1991 budget request as the minimum with which we can operate. I fully anticipate that we will be back before you to request that our appropriation ceiling be raised. Thank you for your attention. I will be happy to answer any questions you may have.

Mr. CAMPBELL. I would like to introduce Mr. Gary Davis, who is the General Counsel for the Office of Government Ethics.

Mr. DAVIS. Good morning, Mr. Chairman.

Mr. ROYBAL. Good morning.

Mr. CAMPBELL. And Mr. Bob Lammon, our Administrative Officer, is I believe in the hallway talking to Bill Smith. And he will be joining us in just a moment.

Mr. Chairman, OGE was here in March of 1989 for our first time. At that time OGE was to become an independent agency in October, and we were asking for a budget of $3,414,000 and 53 FTEs—an increase of 18 positions. The Congress acted favorably on our request. A lot has happened since that budget hearing last March.

OGE at that time was attempting to learn how to deal with becoming an independent agency; worrying how to handle payroll and personnel matters. We were attempting to figure out how to handle our new duties and responsibilities set forth in our reauthorization legislation passed in November of 1988.

ADDITIONAL RESPONSIBILITIES

In April of 1989, the President issued a new executive order dealing with standards of conduct for the Executive Branch, which set in motion a number of new duties and responsibilities for OGE.

In November of 1989, the Ethics Reform Act was passed, which extensively revised existing statutes and added new ethics programs—again a number of new duties and responsibilities for OGE. At present time, the Congress is looking at a number of technical amendments to the Ethics Reform Act, and again our duties and responsibilities may change.

PREVAILING ENVIRONMENT

The bottom line, Mr. Chairman, is that the Office of Government Ethics is in a state of flux. We have to change our priorities every few days to meet the latest challenge. It is difficult to plan our budget and personnel needs in such a fluid situation. When you operate with a small professional staff such as ours, it takes very little to get you off track from your stated goals and priorities. For example, for a number of years we have talked about increasing the frequency of our agency audits and increasing our training sessions.

It never seems to happen just the way we plan it. We either have a matter involving a prominent member of the administration which takes maybe a fourth of our legal staff to resolve, or we have an oversight committee that requests that we conduct an investigation of an ethical concern of an advisory committee of the SDI, which consumes much needed manpower and travel funds. Or you plan a budget for printing costs of $50,000 and because of new duties, you are now looking at publication of 14 different regulations at an estimated cost of $125,000.

FUNDING CEILING

Mr. Chairman, let us look at our budget request for 1991. It is a request for $86,000 increase over 1990. It is only $86,000 because that will take us to our ceiling of $3,500,000. The figures in our

1991 request are unrealistic. The $2,245,000 figure for personnel compensation will not support 53 positions. That figure was based on 1989 positions and does not reflect government-wide raises, promotions, or the fact that some positions were filled or will be filled with higher grades than originally planned. The amount of funds needed to support 53 positions is actually $225,000 higher than what is reflected in our 1991 budget estimate request.

I am not sure the other amounts in our budget will support the actual need. Each item, except for travel and rent, was reduced from the 1990 figure to make sure that the budget did not go over the ceiling of $3,500,000.

BUDGET AMENDMENT

Realizing our budget problems for 1991, we have requested that OMB permit us to seek legislation raising our budget ceiling from $3.5 million to $5 million. That request has been approved, and on Tuesday of this week such proposed legislation was sent to the Congress. I can also advise that if that ceiling is raised, OMB is prepared to support us in seeking a budget amendment in the amount of $225,000 for Fiscal Year 1991.

JUSTIFICATION OF PERSONNEL

Looking at our present situation of the 53 authorized positions, we have filled 41. It is our belief that our present budget request for 1991 will only support 45 or 46 positions. We do not have a director on board at present, and I have not filled all available positions up to the 45 or 46 level. A new director should have some leeway in filling a few positions, and also because of the very fluid position we find ourselves in, we need more time to determine what the nature of those few remaining positions should be to best serve our needs.

Our 1990 budget will support 53 FTEs. It is the 1991 budget that due to funding constraints, will not permit us to go over the 45 or 46 positions. Mr. Chairman, in our 1991 budget request, personnel compensation and rent account for 92 percent of our requested budget. There is no room to divert other funds to personnel compensation. We made our case in 1990 for 53 FTEs. We have since that time been given a number of additional duties and responsibilities. OGE needs the $3.5 million requested, as well as your support for a budget amendment at the appropriate time.

Mr. Chairman, I will be happy to answer any questions.

Mr. ROYBAL. Mr. Campbell, I would like to be able to understand your situation with regard to personnel. You told the committee that you have authorized 53 FTEs.

Mr. CAMPBELL. That is correct.

Mr. ROYBAL. That of those, you have hired 41 up to the present time.

Mr. CAMPBELL. Correct.

Mr. ROYBAL. That under the new budget request, you will only be able to hire up to 45, which means four more than you have now, which still would not reach the 53 that are authorized.

Mr. CAMPBELL. That is right.

Mr. ROYBAL. Why will you not be able to hire the full 53?

Mr. **Campbell**. Because, Mr. Chairman, the ceiling that is in our legislation authorizing our office is at $3.5 million. And if we go above that 45 or 46 positions, we will exceed the $3.5 million.

Mr. **Roybal**. In other words, you were authorized 53 but not given the money to fund that level of employment.

Mr. **Campbell**. That is correct. At the time of our reauthorization, the figure 3.5 was set, and this budget process caught up with us, once we realized our problem, we immediately sought relief through OMB. The proposed legislation that I mentioned has been sent to the Congress requesting that the ceiling be raised.

AGENCY RESPONSIBILITIES

Mr. **Roybal**. All right. Now with regard to your primary responsibility, that responsibility is to provide overall direction to the Executive Branch agencies to ensure high ethics standards.

Mr. **Campbell**. That is correct.

Mr. **Roybal**. In view of the fact that you do not have full staffing, are you actually complying with that responsibility?

Mr. **Campbell**. Well Mr. Chairman, the three areas that I outlined—our reauthorization act, a new executive order from the President in April, and the Ethics Reform Act that was just passed—impose a number of new additional duties and responsibilities on our office. We feel that we desperately need those additional positions to comply with those requirements in those three different areas.

Mr. **Roybal**. All right. The bottom line is that compliance is attempted, and is being done in the very best manner that you can based on the appropriation that is made available to you, but in order to fully comply you need 53 full staffing positions, plus the money that goes with it.

Mr. **Campbell**. That is correct, Mr. Chairman.

Mr. **Roybal**. All right. Mr. Skeen?

DEFINITION OF PERFORMANCE

Mr. **Skeen**. Thank you, Mr. Chairman. Mr. Campbell, it is good to have you here. It is a little hazy in my mind what OGE does. Give me a scenario. I know your primary mission is educational and advisory. So give me a scenario of what you would be asked to do and how you would do it.

Mr. **Campbell**. Normal duties fall into several different categories, Mr. Skeen. All the presidential appointees that require Senate confirmation must file a public financial disclosure form. Our office reviews that form and looks for any possible conflicts between the position they will be going into in government and their assets that are disclosed on that public financial disclosure form. One of those statements, as we call them, public financial statements might take anywhere from a half hour to three weeks to resolve, depending on——

Mr. **Skeen**. I see.

Mr. **Campbell** [continuing]. The amount of income and what is listed on that particular form. And there are approximately 1,000 positions in the Executive Branch where we have the possibility of reviewing the 278s form. Each year there are annual statements required to be filed on May 15. Again for all the presidential appointees, our office must review those annual statements.

Mr. **Skeen**. Do you do the financial disclosure statements and then——

Mr. **Campbell**. And then the annual statements we review, too.

Mr. **Skeen** [continuing]. The annual statements on financials.

Mr. **Campbell**. Right. And termination statements for those appointees also.

Mr. **Skeen**. They are all in financial disclosure——

Mr. **Campbell**. That is correct.

Mr. **Skeen** [continuing]. Areas.

Mr. **Campbell**. We administer the entire program for the Executive Branch in the financial disclosure area. Our particular office only actually reviews those of presidential appointees that require Senate confirmation. But the other financial disclosures that are collected from Grade 16s and above remain in the agencies, and we administer the program that sets up and handles that system.

In the area of standards of conduct—the executive order that I just described issued by the President in April—requires us to issue a set of regulations that will be used government-wide in the Executive Branch. So we are in the process of developing one set of standards of conduct regulations for use within the entire Executive Branch.

Right now, we administer that program but almost every agency, because of the way things have developed over a period of years, has their own standards of conduct regulations that adhere to certain basic principles, but they all differ in certain details. With the new executive order, this is an attempt to make them all be the same.

In the area of the criminal conflict of interest, once a person has acted and is in jeopardy, that is the Department of Justice's call. But up until that time, we do a lot of training. We give advice to agency ethics officials, to people in the Executive Branch in situations that are coming up to keep them out of trouble.

Mr. **Skeen**. So they can ask you for advice.

Mr. **Campbell**. That is correct. Those are the three sort of basic areas, but then there are a lot of little nuances that go with all of these areas.

Mr. **Skeen**. The gray areas.

Mr. **Campbell**. The gray areas. For example—Mr. Chairman, I brought a copy of a book published in the past year. It is our Informal Advisory Letters and Memoranda and Formal Opinions over the last ten years.

Mr. **Skeen**. Could you give us a short report on that?

[Laughter.]

INFORMAL ADVISORY LETTERS AND MEMORANDA

Mr. **Campbell**. This is a copy of our informal opinions that we have given primarily to agencies and individuals. We have redacted the names of the agency and the individuals. And we published this past year, and over 8000 copies were sold by the Government Printing Office in the first printing.

Mr. **Skeen**. So it would be sort of a printed guide——

Mr. **Campbell**. That is correct.

Mr. **Skeen** [continuing]. Of what you have already covered.

Mr. **Campbell**. Each of the agencies, as you know, is responsible for their own ethics program. They have a designated agency ethics official. And those are the individuals that we primarily work with, and issue advice to, and answer their questions on a daily basis to try to give them guidance in handling their day-to-day problems.

APPOINTEE CERTIFICATIONS

Mr. **Skeen**. We have heard of the famous FBI backgrounding reports and so forth. Do you have any time that you meld all these together or coordinate them, or do you stay strictly on the standards of conduct, as far as appointees are concerned?

Mr. **Campbell**. If there is any allegation of wrongdoing, that would be up to the Department of Justice.

Mr. **Skeen**. Then you bounce it back to them.

Mr. **Campbell**. We bounce it back to them.

Mr. **Skeen**. I see.

Mr. **Campbell**. We have no investigators.

CURRENT STAFFING

Mr. **Skeen**. Well I do not think with 41 FTEs that you would have much time to be out investigating.

Mr. **Campbell**. No. And since becoming an independent agency, we have had to use five of those FTEs for new positions basically to run an independent agency, which cuts into our manpower situation even more.

Mr. **Skeen**. You have got about 12 vacant positions then as far as going over your cap, assuming that you had the money, and that is the big crush here is to get that $225,000 supplemental.

Mr. **Campbell**. Well when you look at our 1991 request, that will take care of personnel cost. When you look at the other costs in our budget submission we have reduced them all. And from discussions with OMB, it does not look like help in these other areas—just in the cost of personnel cost. [Laughter.]

I hope we are able to provide.

Mr. **Skeen**. You do not have any expansion. It is——

Mr. **Campbell**. And it is just like the situation I cited. We have 14 different sets of regulations that we are currently working on. We estimate the printing cost in the Code of Federal Regulations and the Federal Register will cost us about $125,000. We budgeted $50,000 in this year for that. If we do not get them published this year and they move over into next year's budget, we are in trouble.

ENFORCEMENT POWER

Mr. **Skeen**. Yes, sir. What enforcement power do you have, if any?

Mr. **Campbell**. In criminal matters, none.

Mr. **Skeen**. Do you turn them over to Justice?

Mr. **Campbell**. There is a provision that any time, as I have said before, that there are allegations of criminal misconduct, we are required to forward it to the public integrity section of the Department of Justice. But there is an enforcement provision within the standards of conduct area.

It was set up in our reauthorization in November of 1988—a procedure that we must go through to bring an agency into compliance with having a proper ethical program, or with individuals where we must give them a hearing and due process and so forth. So that was set out in the reauthorization legislation.

Mr. **Skeen**. Quasi-enforcement power. I am disturbed because there is a general popular perception that government employees are basically dishonest. How serious a problem is the ethics in government? I do not share that. I think it is——

Mr. **Campbell**. No. I do not either.

Mr. **Skeen**. You deal with it, and I would like to get reflection from you just how pervasive the problem is, or is it a small problem, medium, large, whatever. Go ahead and give me your opinion.

Mr. **Campbell**. It is hard for us to answer that, mainly because the ethics program is a decentralized program, each agency being responsible for its own ethic program with us setting policy and guidelines. We do not really get the feel from each agency——

Mr. **Skeen**. So you do not have an overall——

Mr. **Campbell**. In our reauthorization act, we are required to submit a biannual report to Congress which is due tomorrow. And we did gather statistics from each of the agencies. And in looking in the area of standards of conduct type of violations, what we got back from each of the individual agencies would indicate that the problem is rather minute in that area.

Mr. **Skeen**. Do you have any more specific data that you could give me?

Mr. **Davis**. No. I would add this, sir. I would emphasize that as far as the conduct of the career employees, we have not noticed any change whatsoever. And I think the public notoriety that attaches to cases are those in political appointed positions, and I think just gets more press. But as far as——

Mr. **Skeen**. Just career types?

Mr. **Davis** [continuing]. Career types getting——

Mr. **Skeen**. Very low problems as far as ethics.

Mr. **Davis**. That is correct.

Mr. **Skeen**. I find them mostly very hardworking and honest folks. But you deal with it on a day-by-day basis. And what I wanted to do is get a gauge of just how deep or how widespread the problem is. I appreciate your responses very much. Thank you, Mr. Chairman.

EFFECTIVE ETHICS PROGRAM

Mr. **Roybal**. Mr. Campbell, you told Mr. Skeen that each department has its own ethics program. Are there any departments that are particularly effective versus those that are weak in that area?

Mr. **Campbell**. Yes, Mr. Chairman. And that is another fluid situation, too. When the agency head changes or the individuals that are administering the ethics program change, then that agency's program could change. So programs can change quite rapidly. At present, I think we have identified the Department of Interior as an agency having an exceptionally good program.

Mr. **Roybal**. Are there departments that are not so good?

Mr. **Campbell**. There are a number of departments that need a lot of improvement. Yes, Mr. Chairman.

Mr. **Roybal**. All right. Now if there is one department that is outstanding, is it because of their methodology, the program itself, or is it more because of the individual that heads that department?

Mr. **Campbell**. It boils down to the head of the agency giving sufficient manpower to do the job. That is where the biggest problem is in most agencies of not sufficient manpower and resources. In most agencies the ethics official is a part-time position, and that is the problem.

Mr. **Roybal**. Then it has nothing to do then with the possibility that the rules governing ethical behavior are so complicated that they make compliance difficult.

Mr. **Campbell**. No. I think when you have sufficient manpower to oversee it and to do the proper training within the agency, and to give the advice that is needed, and to follow through on monitoring their financial disclosure systems and so forth, the program works well when you have the sufficient manpower to give.

Mr. **Roybal**. But it seems to me that the program of education can go a long way and can substitute for policemen standing behind you——

Mr. **Campbell**. That is right.

Mr. **Roybal** [continuing]. During the time that you are working. So there must be some credit to be given to the program.

Mr. **Campbell**. That is correct.

Mr. **Roybal**. It could well be that in the Department of Interior and other departments that are excellent, they have a good program, that they talk to one another. I think that one of the biggest problems that we have is that in many instances we do not talk to one another. We do not confide in one another. There is no longer that feeling of comradeship so that you are working together to accomplish something. All of that I think is important.

Mr. **Campbell**. Yes, sir.

ETHICS TRAINING

Mr. **Roybal**. Is there a program of education of some kind being installed or instituted so that that kind of feeling can become part of the overall program?

Mr. **Campbell**. Oh, yes. And that is a major part of our program within our office.

Mr. **Davis**. Regional training.

Mr. **Campbell**. We do a lot of training. We have people on our staff that are dedicated to training. We utilize the entire attorney staff and our management analyst staff to supplement training for the agency ethics officials. We go out to the various regions around the country where there are a high number of government employees and do regional training in those areas.

Mr. **Roybal**. I believe that to be the main function and the most important function that you can perform.

Mr. **Campbell**. I would agree.

Mr. **Roybal**. What about the personnel that is performing that function? Do you have enough personnel to do that?

Mr. **Campbell**. There is never enough personnel.

Mr. **Roybal**. I understand that.

Mr. **Campbell**. But, yes. That is an area where ideally we would like to do a lot more than we are doing. Yes. Because I agree with you the training is what prevents a lot of the problems.

Mr. **Davis**. Mr. Chairman, I would like to add one point.

Mr. **Roybal**. All right.

Mr. **Davis**. For the first time this past year, we held training sessions for the entire staff at the White House. Each new nominee that comes in is briefed. We had the good fortune to be able to go over as a team from the Office of Government Ethics and talk to all these new appointees on several occasions. In fact, we briefed the entire White House staff. Some of the night shift, for instance, we would go over at 5:00 in the afternoon and do these briefings.

So we have gone through the entire process, and that was a criticism in the past that we did not have an opportunity to catch these folks as they came into government. We have done that this time around.

Mr. **Roybal**. Do you also have classes on intergenerational communication?

Mr. **Davis**. Yes. We do this. We have a part of our—for instance, in our regional training we have problems that we put out during the sessions that we require the different agencies to work together on. And so there is interchange there.

Mr. **Roybal**. How many women do you have in your department? Of the 53 employees that you have, how many are women? Supply for the committee the number that you have. Then also break it down to ethnic minorities, too.

Mr. **Campbell**. Of the 41 positions currently filled, 22 are female and 10 are black employees.

Mr. **Roybal**. We would like to thank you, Mr. Campbell, for your testimony.

Mr. **Campbell**. Thank you, Mr. Chairman.

Mr. **Roybal**. It was a pleasure. The committee will be in recess for about 10 minutes.

[The justifications follow:]

Office of
Government Ethics

CONGRESSIONAL
BUDGET
JUSTIFICATION

Fiscal Year 1991

OFFICE OF GOVERNMENT ETHICS

BUDGET HIGHLIGHTS

The FY 1991 budget request for the Office of Government Ethics is $3.5 million. The major features of the request are:

- an appropriation request of $79 thousand to enhance nationwide training objectives, a government-wide ethics manual and revised videotape;
- an appropriation request of $7 thousand in additional travel/audit funding; and
- an appropriation request of $3.4 million, which includes approximately 75% or $2.6 million for personnel compensation and benefits costs, to fund the program responsibilities of the OGE. The major parts are:
  - $1 million for Administrative Services activities,
  - $1.4 million for Regulatory, Guidance and Interpretation activities,
  - $217 thousand for Education and Training activities, and
  - $760 thousand for Enforcement and Evaluation activities.

OGE's requested personnel ceiling of 53 full-time equivalent (FTE) employees will be financed by the Salaries and Expenses appropriation.

OFFICE OF GOVERNMENT ETHICS
SALARIES AND EXPENSES

SUMMARY OF BUDGET ESTIMATE
(dollar amounts in thousands)

ACCOUNT	FY 1989 ACTUAL	FY 1990 ESTIMATE	FY 1991 REQUEST
FEDERAL FUNDS			
General and Special funds:			
Budget Authority........................	$ 1,822	$ 3,369	$ 3,500
Appropriation...........................	-----	$ 3,414	$ 3,500
Reduction pursuant to P.L. 99-177.......................	-----	$ -45	-----
Appropriation (adjusted)................	-----	$ 3,369	$ 3,500
Outlays.................................	-----	$ 3,302	$ 3,430
Full-Time Equivalents...................	30	46	53*

* Requested Budget will only support 46 FTE's.

OFFICE OF GOVERNMENT ETHICS
SALARIES AND EXPENSES

SUMMARY OF CHANGES
(in thousands of dollars)

Approved FY 1990 Appropriations	$ 3,414

Description of Program

The Office of Government Ethics (OGE) was established by the Ethics in Government Act of 1978 to provide "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." Public Law 100-598 reauthorized OGE as a separate agency, as of October 1, 1989.

Programmatic Changes

• Increase in order to expand the variety of new training materials including a government-wide ethics manual and revised videotape	79
• Increase in travel funding to accomplish increased frequency of regional audits and nationwide training activity	7
Total Changes	$ 86
Total FY 1991 Appropriations Request	$ 3,500

OFFICE OF GOVERNMENT ETHICS

OBJECT CLASSIFICATION DATA
(in thousands of dollars)

DIRECT OBLIGATIONS:		1989 ACTUAL	1990 ESTIMATE	1991 ESTIMATE
	Personnel Compensation:			
11.1	Full-time permanent	1,425	2,109	2,223
11.5	Other personnel compensation	7	21	22
11.9	Total personnel compensation	1,432	2,130	2,245
12.1	Civilian personnel benefits	226	353	373
21.0	Travel and transportation of persons	23	51	58
22.0	Transportation of things	2	4	4
23.1	Rental payments to GSA	--	403	602
23.3	Communications, utilities, and miscellaneous charges	21	78	69
24.0	Printing and reproduction	15	55	31
25.0	Other services	58	138	90
26.0	Supplies and materials	8	25	15
31.0	Equipment	37	132	13
99.0	Total obligations	1,822	3,369	3,500

NOTE: The 1990 estimate reflects a sequestered reduction of $45 from OGE's approval appropriation under P.L. 101-136 of $3,414.

OFFICE OF GOVERNMENT ETHICS

DETAIL OF PERMANENT POSITIONS

GRADE	1989 ACTUAL	1990 ESTIMATE	1991 REQUEST
Executive level III	1	1	1
ES-2	1	1	1
ES-5	1	1	1
ES-6	1	1	1
GM-15	6	7	7
GS/GM-14	3	8	8
GS/GM-13	6	8	8
GS-12	4	10	10
GS-11	1	4	4
GS-10	1	1	1
GS-9	1	1	1
GS-8	1	2	2
GS-7	1	1	1
GS-6	1	3	3
GS-5	3	2	2
GS-4	2	2	2
Total permanent positions	35	53	53
Unfilled positions, end of year	1	7	--
Total permanent employment, end of year	34	46	53*

* Requested Budget will only support 46 FTE's.

TUESDAY, MARCH 27, 1990.

OFFICE OF PERSONNEL MANAGEMENT

WITNESSES

CONSTANCE BERRY NEWMAN, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

PATRICK J. CONKLIN, INSPECTOR GENERAL, OFFICE OF PERSONNEL MANAGEMENT

Mr. ROYBAL. The meeting will come to order. The committee is in session this afternoon to hear from the Office of Personnel Management. This Office consists of separate appropriations for five different operations within the Office of Personnel Management.

We will first take up the salaries and expenses, and that is Director Ms. Newman. Proceed in any manner that you would desire.

Ms. NEWMAN. Mr. Chairman, I would like to submit for the record my written statement; however, there are a few points that I would like to make.

Mr. ROYBAL. All right. Without objection then, the full statement will appear in the record at this point, and I would ask you to summarize.

Ms. NEWMAN. Yes. I would like to thank you for inviting me to appear to discuss the request for appropriations for the Office of Personnel Management.

BUDGET PROPOSALS ON PERSONNEL

Before getting into our specific requests, I would like to highlight the fact that the President's budget for 1991 calls for significant legislative changes in federal employee pay and benefits.

With regard to pay, I would like to highlight the fact that we propose to offer geographic differentials, up to 8 percent, for the general schedule workers in three high-cost metropolitan areas—New York, Los Angeles, and San Francisco.

In addition to that, we propose to increase starting salaries nationwide for entry-level occupations normally filled by college graduates at the GS-5 and GS-7 levels. We note that there are large disparities between federal and non-federal entry-level pay for most professional and administrative occupations.

As a result, the government is at a disadvantage in competing for the graduates of our nation's universities, so that we believe that the 5 percent addition would restore the government's ability to recruit college graduates.

We also are interested in building an additional flexibility in order to help the government recruit and retain the best. For one, we proposed to extend to all grade levels the authority to hire individuals with unique qualifications above the minimum.

We propose to authorize the payment of bonuses to recruit and retain or relocate workers with critical skills. And in addition to these and others mentioned in the full statement, of course, there will be the 3.5 percent across-the-board pay adjustment.

These, Mr. Chairman, are interim steps. This is Phase 1 in recognition of the fact that the government must solve its long-term pay problems. We must move from the monolithic system to one that is market-sensitive.

On another basis, we are proposing reform of the health benefit system. I won't go into the nature of the reform. It is in the full statement, but you note that in 1991 we are recommending either your consideration of the weighted average or using our ability to solve some of the short-term problems, particularly the fiscal problems, through a mix of administrative and legislative changes. Beyond these interim measures, the comprehensive reform that we are proposing will address the basic problems of risk segmentation and economic inefficiencies in the system. We will soon be submitting legislation to deal with a number of the retirement issues.

First, we cite the fact that very few private pensions are fully and automatically adjusted for inflation. Cost-of-living adjustments under the civil service retirement system continue to be linked to the total change in the consumer price index.

In order to provide consistency and equity within the federal service, our proposal will revise the method of computing the cost-of-living adjustment under that older system to conform with the CPI-Minus-One formula used in the newer federal employees' retirement system.

We are proposing to require the Postal Service and the District of Columbia government to pay more fully for the cost-of-living adjustments and retirement benefits for their annuitants and removing from the old and new retirement system, provisions which would permit employees to withdraw an amount equal to their contributions to the systems in a lump sum at the time of retirement.

In addition to those, I want to just highlight a few of our proposals in the budget.

We will be proposing to establish a new public service scholarship program, to be awarded to exceptional students at the undergraduate or graduate level.

APPROPRIATIONS REQUEST

We are asking, Mr. Chairman and members of the committee, for salaries and expenses appropriations for $113.9 million. Of that amount, $1.3 million over our FY 90 appropriations will be used to support the pay reform initiatives that I discussed earlier.

We would devote $1 million to improved training for federal employees on how to deal with the public. I believe that improving the front line—the employees who serve as the initial points of contact with the public—is vital.

For our administration of the retirement and insurance programs, we are requesting an expense limitation of $75.2 million, including $800,000 to continue developing the automated processing system.

Of that amount, $950,000 will be devoted to comprehensive, ongoing training programs aimed at improving the skills and productivity of our front line staff in the retirement operations.

We propose to commit $474,000 to improving the quality of information provided to annuitants.

The OPM appropriation also includes payments for government-wide employee benefits programs. At the current services level, we would need $3.5 billion to pay the government's share of the cost of health benefits for retirees and survivors who, of course, have no agency to contribute the government's share.

In addition, funding will be needed for the government's share of the cost of life insurance for retirees who have not reached the age of 65.

For the civil service retirement fund, we are requesting an appropriation of nearly $5.7 billion in current authority. This payment, which is required under the financing system established in 1969 by Public Law 91-93, represents payments amortized over a 30-year cycle for the retirement costs that are attributed to pay increases and benefit liberalizations.

I thank you, and I will be glad to answer any questions.

[The information follows:]

STATEMENT OF
HONORABLE CONSTANCE BERRY NEWMAN, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

on

FISCAL YEAR 1991 APPROPRIATIONS REQUEST
FOR THE OFFICE OF PERSONNEL MANAGEMENT

MARCH 27, 1990

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR INVITING ME TO APPEAR THIS MORNING TO DISCUSS THE PRESIDENT'S REQUEST FOR APPROPRIATIONS FOR THE OFFICE OF PERSONNEL MANAGEMENT FOR FISCAL YEAR 1991. AS REQUESTED BY THE SUBCOMMITTEE, A REPRESENTATIVE OF OUR INSPECTOR GENERAL'S OFFICE WILL TESTIFY ON THAT OFFICE'S APPROPRIATIONS REQUEST.

AS I'M SURE YOU ARE AWARE, THE PRESIDENT'S BUDGET FOR FISCAL YEAR 1991 CALLS FOR SIGNIFICANT LEGISLATIVE CHANGES IN FEDERAL EMPLOYEE PAY AND BENEFITS PROGRAMS. IF I MAY, I WOULD LIKE TO BEGIN BY BRIEFLY REVIEWING THOSE INITIATIVES, BEFORE TURNING TO OPM'S OWN BUDGET.

IN THE AREA OF PAY FOR FEDERAL EMPLOYEES, THE PRESIDENT'S BUDGET CALLS FOR EARLY IMPLEMENTATION OF THE FIRST PHASE OF

THE ADMINISTRATION'S PAY REFORM INITIATIVE. THIS WILL INVOLVE BOTH INTERIM MEASURES AND SELECTED ADDITIONAL FEATURES DESIGNED TO ADDRESS THE MOST CHRONIC AND PRESSING PAY PROBLEMS.

FIRST, WE PROPOSE TO OFFER GEOGRAPHIC DIFFERENTIALS OF UP TO 8 PERCENT FOR GENERAL SCHEDULE WORKERS IN THREE HIGH LABOR COST METROPOLITAN AREAS--NEW YORK, LOS ANGELES, AND SAN FRANCISCO. WHILE IT IS TRUE THAT SALARY RATES FOR FEDERAL JOBS ARE BEHIND THOSE IN THE NON-FEDERAL SECTOR IN MANY PARTS OF THE COUNTRY, LABOR COSTS IN THESE THREE LOCATIONS ARE FAR ABOVE NATIONAL NORMS, AND FEDERAL AGENCIES IN THESE AREAS ARE EXPERIENCING PARTICULARLY SEVERE RECRUITING AND RETENTION PROBLEMS. PAYMENT OF GEOGRAPHIC DIFFERENTIALS WILL PROVIDE SOME INTERIM RELIEF.

SECOND, WE PROPOSE TO INCREASE STARTING SALARIES NATIONWIDE FOR ENTRY-LEVEL OCCUPATIONS NORMALLY FILLED BY COLLEGE GRADUATES AT THE GS-5 AND GS-7 LEVELS. CURRENTLY, THERE ARE LARGE DISPARITIES BETWEEN FEDERAL AND NON-FEDERAL ENTRY-LEVEL PAY FOR MOST PROFESSIONAL AND ADMINISTRATIVE OCCUPATIONS. AS A RESULT, THE GOVERNMENT IS AT A SERIOUS DISADVANTAGE IN COMPETING FOR GRADUATES OF OUR NATION'S UNIVERSITIES. BEING ABLE TO PAY AN ADDITIONAL 5 PERCENT AT THESE LEVELS WILL HELP TO RESTORE THE GOVERNMENT'S ABILITY TO RECRUIT COLLEGE GRADUATES FOR FEDERAL SERVICE.

THIRD, WE PROPOSE TO EXTEND TO ALL GRADE LEVELS THE AUTHORITY TO HIRE INDIVIDUALS WITH UNIQUE OR SPECIAL QUALIFICATIONS AT RATES ABOVE THE MINIMUM FOR THE GRADE. THIS AUTHORITY IS CURRENTLY AVAILABLE ONLY AT GS-11 AND ABOVE. REMOVING THAT LIMITATION WILL ENABLE AGENCIES TO COMPETE MORE EFFECTIVELY FOR SPECIALLY SKILLED INDIVIDUALS AT ENTRY AND ADVANCED ENTRY LEVELS.

FINALLY, WE PROPOSE TO AUTHORIZE THE PAYMENT OF BONUSES TO RECRUIT, RETAIN, OR RELOCATE WORKERS WITH CRITICAL SKILLS. THESE FLEXIBILITIES WILL GIVE AGENCIES A BADLY NEEDED TOOL FOR GETTING PARTICULARLY WELL-QUALIFIED INDIVIDUALS TO COME TO, OR REMAIN IN, THE FEDERAL SERVICE. ALSO, SUCH A BONUS AUTHORITY WILL BE HIGHLY USEFUL IN ENCOURAGING INDIVIDUALS TO MOVE FROM ONE LOCATION TO ANOTHER, ESPECIALLY WHEN THE MOVE IS FROM A RELATIVELY LOW COST AREA TO ONE WHERE THE COSTS ARE RELATIVELY HIGH.

ALL THE PROPOSALS I JUST DESCRIBED ARE, OF COURSE, IN ADDITION TO THE 3.5 PERCENT ACROSS-THE-BOARD PAY ADJUSTMENT CONTAINED IN THE FY 91 BUDGET.

THESE ARE, HOWEVER, ONLY THE FIRST STEPS TOWARD A COMPREHENSIVE, LONG-TERM SOLUTION TO THE GOVERNMENT'S PAY PROBLEMS. WE ARE NOW COMPLETING THE COORDINATION OF VIEWS WITHIN THE

EXECUTIVE BRANCH ON A LEGISLATIVE PROPOSAL TO ACHIEVE FUNDAMENTAL PAY REFORM.

WITH REGARD TO THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM, THE ADMINISTRATION WILL, AS IN THE PAY AREA, BE TAKING INTERIM STEPS TO STABILIZE THE PROGRAM WHILE PURSUING COMPREHENSIVE REFORM. THAT STABILIZATION IS TO COME ABOUT EITHER BY USING A WEIGHTED AVERAGE FORMULA FOR DETERMINING THE GOVERNMENT'S CONTRIBUTION OR BY THE ADOPTION OF A MIX OF LEGISLATIVE AND ADMINISTRATIVE INITIATIVES. THE "WEIGHTED AVERAGE" FORMULA WOULD USE AS A CAP ON THE MAXIMUM DOLLAR AMOUNT THE GOVERNMENT WOULD CONTRIBUTE TO EACH EMPLOYEE'S PLAN, 60 PERCENT OF THE WEIGHTED AVERAGE OF ALL PLANS. THIS FORMULA WOULD BE A SUBSTITUTE FOR THE PRESENT FORMULA WHICH IS 60 PERCENT OF THE SIMPLE AVERAGE OF THE "BIG SIX" CARRIERS. IN 1975, WHEN THE "BIG SIX" REPRESENTED 90 PERCENT OF ALL FEHB ENROLLMENT, A SIMPLE AVERAGE OF THEIR PREMIUMS WAS AN ADEQUATE METHOD OF ASCERTAINING THE GOVERNMENT'S SHARE OF THE COST. TODAY, HOWEVER, WITH 321 PLANS, AND WITH ONE OF THE "BIG SIX" (AETNA) HAVING LEFT THE PROGRAM, THE WEIGHTED AVERAGE APPROACH WOULD MORE ACCURATELY REFLECT THE ORIGINAL INTENT OF THE LAW.

ALTERNATIVELY, SIMILAR SAVINGS FOR FISCAL YEAR 1991 COULD BE ACHIEVED THROUGH A MIX OF LEGISLATIVE AND ADMINISTRATIVE

CHANGES. WE ARE FULLY PREPARED TO SUPPORT THIS APPROACH IF CONGRESS PREFERS IT TO THE WEIGHTED AVERAGE APPROACH. THE REQUIRED LEGISLATIVE ACTIONS WOULD INCLUDE: 1) IMMEDIATE PREEMPTION OF STATE PREMIUM TAXES; 2) UNIFICATION OF THE CONTINGENCY RESERVES, WHICH NOW EXIST ON A PLAN-BY-PLAN BASIS AND ARE EXCESSIVE IN VIEW OF THE RISKS CONFRONTING THE PROGRAM AS A WHOLE; AND 3) CHANGING THE CALCULATION OF THE FEHB GOVERNMENT CONTRIBUTION FROM 60 PERCENT OF THE "BIG SIX" AVERAGE TO 67 PERCENT OF THE WEIGHTED AVERAGE, RESULTING IN AN AGGREGATE GOVERNMENT SHARE OF PREMIUM COSTS OF 65 PERCENT.

OPM WILL ALSO UNDERTAKE ADMINISTRATIVE ACTIONS THAT ARE CONSISTENT WITH REFORM OBJECTIVES AND LESSEN THE RATE OF PREMIUM INCREASE. THESE ACTIONS INCLUDE: 1) ENSURING THAT PROPER COORDINATION TAKES PLACE WITH RESPECT TO MEDICARE BENEFITS AND THAT PAYMENTS DO NOT EXCEED THE SPECIFIED MAXIMUM ALLOWABLE ACTUAL CHARGES; AND 2) MANDATING THAT PARTICIPATING CARRIERS ADOPT APPROPRIATE COST-CONTAINMENT TECHNIQUES. WE WILL ALSO REQUIRE THAT PROFIT CHARGES REFLECT THE EFFECTIVENESS OF THESE CHANGES, AS DETERMINED BY INDEPENDENT ASSESSMENTS.

BEYOND THESE INTERIM MEASURES, THE COMPREHENSIVE REFORM THAT WE ARE PROPOSING WILL ADDRESS THE BASIC PROBLEMS OF RISK SEGMENTATION AND ECONOMIC INEFFICIENCIES WHILE CONTINUING TO

SUPPORT THE FUNDAMENTAL PRINCIPLES OF COST SHARING AND INFORMED CHOICE. THE NEW PROGRAM WOULD BE SELF-INSURED AND WOULD OFFER A CHOICE AMONG FIVE INDEMNITY BENEFIT PLANS ADMINISTERED THROUGH CONTRACTS, WITH HMO ALTERNATIVES IN A GIVEN GEOGRAPHIC AREA.

ONE FINAL HEALTH BENEFITS ISSUE OF PARTICULAR INTEREST TO THE SUBCOMMITTEE INVOLVES THE BUDGET PROPOSAL TO COMPLETE THE CHANGE TO REQUIRING THE POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA GOVERNMENT AS WELL, TO PAY THE GOVERNMENT CONTRIBUTION TOWARD HEALTH BENEFITS FOR THEIR RETIREES AND THEIR SURVIVORS. AS YOU KNOW, THIS WOULD NOT ONLY ELIMINATE A HIDDEN SUBSIDY TO THESE ENTITIES, BUT WOULD ALSO COMPLETE A PROCESS CONGRESS BEGAN IN 1986. IN THAT YEAR, THE POSTAL SERVICE WAS REQUIRED TO PAY FOR HEALTH BENEFITS COVERAGE FOR POSTAL EMPLOYEES RETIRING AFTER SEPTEMBER 1986. LAST YEAR, THE BUDGET RECONCILIATION MEASURE EXTENDED THAT REQUIREMENT TO COVER INDIVIDUALS WHO BECAME SURVIVORS OF THOSE RETIREES OR OF POSTAL SERVICE EMPLOYEES AFTER THAT DATE.

ALSO, WE WILL SOON BE SUBMITTING LEGISLATION DEALING WITH A NUMBER OF RETIREMENT ISSUES. FIRST, DESPITE THE FACT THAT VERY FEW PRIVATE PENSIONS ARE FULLY AND AUTOMATICALLY ADJUSTED FOR INFLATION, COST-OF-LIVING ADJUSTMENTS UNDER THE CIVIL SERVICE RETIREMENT SYSTEM CONTINUE TO BE LINKED TO THE

TOTAL CHANGE IN THE CONSUMER PRICE INDEX. IN ORDER TO PROVIDE CONSISTENCY AND EQUITY WITHIN THE FEDERAL SERVICE, OUR LEGISLATIVE PROPOSAL WILL REVISE THE METHOD OF COMPUTING COST-OF-LIVING ADJUSTMENTS UNDER THAT OLDER SYSTEM TO CONFORM WITH THE "CPI-MINUS-ONE" FORMULA USED IN THE NEWER FEDERAL EMPLOYEES' RETIREMENT SYSTEM ESTABLISHED JUST A FEW YEARS AGO.

IN ADDITION, WE WILL SEEK TO CANCEL THE FISCAL YEAR 1991 COST-OF-LIVING ADJUSTMENT UNDER RETIREMENT SYSTEMS FOR BOTH MILITARY AND CIVILIAN EMPLOYEES. THIS IS AN ESSENTIAL PART OF THE ADMINISTRATION'S DEFICIT REDUCTION EFFORT.

OUR RETIREMENT PROPOSAL WILL ALSO REQUIRE THE POSTAL SERVICE AND THE D.C. GOVERNMENT TO PAY MORE FULLY FOR THE COST-OF-LIVING ADJUSTMENTS IN RETIREMENT BENEFITS FOR THEIR ANNUITANTS. BY MANDATING THESE ADDITIONAL CONTRIBUTIONS, WE WILL ENSURE THAT THE COSTS OF RETIREMENT BENEFITS ARE PAID BY THE ENTITIES WHOSE EMPLOYEES RECEIVE THESE BENEFITS.

FINALLY, WE WILL BE PROPOSING TO REMOVE FROM THE OLD AND NEW RETIREMENT SYSTEMS PROVISIONS WHICH PERMIT EMPLOYEES TO WITHDRAW AN AMOUNT EQUAL TO THEIR CONTRIBUTIONS TO THE SYSTEMS IN A LUMP SUM AT THE TIME OF RETIREMENT. ELIMINATION OF THESE COSTLY PROVISIONS WOULD SAVE NEARLY $1.5 BILLION IN

FISCAL YEAR 1991 ALONE, WITHOUT ANY REDUCTION IN THE LIFETIME VALUE OF ANNUITANT PENSION BENEFITS.

APART FROM THE PAY AND BENEFITS ISSUES, WE WILL BE PROPOSING LEGISLATION TO ESTABLISH A NEW PUBLIC SERVICE SCHOLARSHIP PROGRAM. SCHOLARSHIPS WOULD BE AWARDED TO EXCEPTIONAL STUDENTS AT THE UNDERGRADUATE OR GRADUATE LEVEL. IN EXCHANGE, EACH RECIPIENT WOULD BE REQUIRED TO WORK FOR THE FEDERAL GOVERNMENT FOR ONE YEAR FOR EACH YEAR OF EDUCATION FUNDED. WE WILL REQUEST FUNDS FOR THIS PROGRAM AFTER THE NECESSARY AUTHORIZING LEGISLATION IS ENACTED.

NOW I WOULD LIKE TO TURN TO THE APPROPRIATIONS REQUEST FOR OPM ITSELF. WE ARE ASKING FOR A SALARIES AND EXPENSES APPROPRIATION OF $113.9 MILLION. AN ADDITIONAL $1.3 MILLION WILL BE USED TO SUPPORT THE PAY REFORM INITIATIVES I DISCUSSED EARLIER. WE WOULD DEVOTE $1 MILLION TO IMPROVED TRAINING FOR FEDERAL EMPLOYEES ON HOW TO DEAL WITH THE PUBLIC. I BELIEVE THAT IMPROVING OUR "FRONT LINE"--THE EMPLOYEES WHO SERVE AS THE INITIAL POINTS OF CONTACT WHEN MEMBERS OF THE GENERAL PUBLIC CONTACT GOVERNMENT AGENCIES--IS VITAL.

FOR OUR ADMINISTRATION OF THE RETIREMENT AND INSURANCE PROGRAMS, WE ARE REQUESTING AN EXPENSE LIMITATION OF $75.2 MILLION, INCLUDING $800,000 TO CONTINUE DEVELOPING

THE AUTOMATED PROCESSING SYSTEM FOR THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM. AN ADDITIONAL $950,000 WILL BE DEVOTED TO A COMPREHENSIVE, ONGOING TRAINING PROGRAM AIMED AT IMPROVING THE SKILLS AND PRODUCTIVITY OF OUR "FRONT LINE" STAFF IN RETIREMENT OPERATIONS. WE ALSO PROPOSE TO COMMIT $474,000 TO IMPROVING THE QUALITY OF INFORMATION PROVIDED TO ANNUITANTS UNDER OUR RETIREMENT PROGRAMS. THIS WILL INVOLVE AN ADDITIONAL ANNUAL MAILING HIGHLIGHTING MAJOR PROGRAM CHANGES SUCH AS THE MEDICARE CATASTROPHIC REPEAL, OR THE WITHDRAWAL OF AETNA FROM THE FEHB PROGRAM.

THE OPM APPROPRIATION ALSO INCLUDES PAYMENTS FOR THE GOVERNMENT-WIDE EMPLOYEE BENEFITS PROGRAMS. AT THE CURRENT SERVICES LEVEL, WE WOULD NEED $3.5 BILLION TO PAY THE GOVERNMENT'S SHARE OF THE COST OF HEALTH BENEFITS FOR RETIREES AND SURVIVORS WHO, OF COURSE, HAVE NO AGENCY TO CONTRIBUTE THE GOVERNMENT'S SHARE. IF THE ADMINISTRATION'S PROPOSED LEGISLATION TO HAVE THE POSTAL SERVICE AND THE D.C. GOVERNMENT PAY THEIR FULL SHARE OF ANNUITANT HEALTH BENEFITS COSTS IS ENACTED, THE FUNDING REQUIREMENT WOULD BE REDUCED TO $2.8 BILLION. FINALLY, IF EITHER THE WEIGHTED AVERAGE PROPOSAL OR THE ALTERNATIVE MIX OF LEGISLATIVE AND ADMINISTRATIVE ACTIONS WERE ADOPTED, THE AMOUNT WOULD BE FURTHER REDUCED.

IN ADDITION, FUNDING WILL BE NEEDED FOR THE GOVERNMENT'S SHARE OF THE COST OF LIFE INSURANCE FOR RETIREES WHO HAVE NOT

REACHED AGE 65. AS WITH HEALTH BENEFITS, SINCE RETIREES HAVE NO EMPLOYING AGENCY, THIS WILL HAVE TO BE DONE BY AN APPROPRIATION TO OPM. THE AMOUNT WE ARE REQUESTING FOR THIS PURPOSE FOR FISCAL YEAR 1991 IS $8.7 MILLION.

FOR THE CIVIL SERVICE RETIREMENT FUND, WE ARE REQUESTING AN APPROPRIATION OF NEARLY $5.7 BILLION IN CURRENT AUTHORITY. THIS PAYMENT, WHICH IS REQUIRED UNDER THE FINANCING SYSTEM ESTABLISHED IN 1969 BY PUBLIC LAW 91-93, REPRESENTS AMORTIZED PAYMENTS OVER A 30-YEAR CYCLE FOR THE RETIREMENT COSTS ATTRIBUTABLE TO PAY INCREASES AND BENEFIT LIBERALIZATIONS.

THANK YOU. I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. **Roybal**. Thank you, Ms. Newman. I think you have answered most of the questions that I had in mind in your statement.

However, for the record, I think we should go back and try to further clarify some of the statements you already made.

PAY REFORM

One of the things that one usually looks at with great interest is any pay reform. You stated that you have introduced a comprehensive reform, and the first question that comes to mind is, why the reform? Does it save the government money? Is that one of the reasons? Why is it that reform was necessary?

Ms. **Newman**. Mr. Chairman, reform of the pay system, in our view, is necessary because the system that is now in place is not sensitive to the market.

We are finding that some of the agencies are having difficulty in recruiting and retaining the people that are needed, and agencies do not have the flexibility to address the very special problems.

So what we need to do is to put into place a pay system that allows agencies to recognize that they have the flexibility for recruitment and retention, that they have the flexibility for staffing differentials, and that government can make across-the-board determinations about changes in the labor costs by geographic area so that we are not paying the same everywhere when it is not necessary.

We are talking about splitting the schedule, to a nationwide schedule for those who are recruited nationwide—professional, administrative—and then locality-based pay for others.

Mr. **Roybal**. Have you lost any valuable employees because there was no comprehensive reform?

Ms. **Newman**. I think a better way—and I will ask Claudia Cooley to back me up, but I will make one observation—I think that what we are finding is evidence that agencies are having difficulty recruiting not only at entry level, but recruiting in some special categories, for example, engineers and computer specialists.

ENTRY LEVEL PAY

We are having difficulty attracting the entry-level college people. There are some agencies that have indicated to us—Health and Human Services, Department of Energy, Department of Defense—that they are having difficulty with some of the senior people leaving, but I think the documentation goes more to our concern about the future.

But Ms. Cooley is the associate director for personnel systems and oversight, and I think she can give additional information.

Mr. **Roybal**. First of all, maybe you can tell us, Ms. Cooley, what GS-5 is and what GS-7 is.

Ms. **Cooley**. GS-5 and 7 are the levels that the government normally uses to recruit individuals who are coming out of our nation's colleges and universities.

Mr. **Roybal**. In dollars and cents, what does that mean? What does a GS-5 pay?

Ms. **Cooley**. Well, the current pay rate—I don't have my pay schedule here.

Actually, I do have my pay schedule. [Laughter.]

Actually, I do. I have it in my purse.

$16,305 is Step 1 of GS–5. That is the entry-level step.

Mr. **Roybal**. How much?

Ms. **Cooley**. It is $16,305.

Mr. **Roybal**. All right, that's Step 1. Do you have to hire them at Step 1?

Ms. **Cooley**. Under our current law, we have to hire them at the minimum of the grade, which is Step 1.

Mr. **Roybal**. All right.

Ms. **Cooley**. And the Grade 7 is $20,195.

Mr. **Roybal**. These are salaries that are offered young men and women just out of college who may be engineers, who may be trained in any professional field, is that correct?

Ms. **Cooley**. These are the normal starting salaries. We do have special rates in certain occupations, such as engineers, for example.

But the norm, the regular General Schedule rates, are the ones I just cited. We do have special rates for certain occupations.

GEOGRAPHIC DIFFERENCES

Mr. **Roybal**. All right, not including the special rates or special occupations, is the same salary paid to an applicant who may be in the Midwest versus someone who may come from the city of New York or the city of Los Angeles? Is there a difference in the pay offered these individuals?

Ms. **Cooley**. No. They are required under the General Schedule to be paid the same amount at the same level, regardless of where they are recruited from or where the job is located.

Mr. **Roybal**. The Advisory Committee on Federal Pay suggested that geographic pay differentials made sense.

Ms. **Newman**. Yes.

Mr. **Roybal**. And I think that it does, and I think you are concurring that a differential, depending on the geographic situation of the individual, would definitely make some sense.

Ms. **Newman**. And our proposal does just that. Our proposal, and we are still wrapping it up within the administration, but I think it is safe to say that our proposal will be providing not only for geographic differentials, but for staffing differentials.

Neither would go into the basic pay. They would be applied so long as the circumstance, whether it is geography or the occupational problems——

Mr. **Roybal**. So your reform does take care of this matter of a geographic differential.

Ms. **Newman**. Right.

Mr. **Roybal**. It also makes some exceptions and sets aside a category for certain professions.

Ms. **Newman**. There would be the determination by the agency within the guidelines—and we are still talking about our proposal, I want to say——

Mr. **Roybal**. Yes, yes.

Ms. **Newman** [continuing]. Within the guidelines the Office of Personnel Management issues, the agency could decide to provide differentials for certain occupations. And there would be additional flexibility for an agency to decide in the case of a specific person to pay a relocation or retention bonus.

Mr. Roybal. Right.

Ms. Newman. If you are talking about some special need for a particular person.

Mr. Roybal. All right, now once you hire that individual and he comes to work for the federal government, under the new proposal, you make some specific recommendations with regard to upper mobility, regarding women and other minorities.

Is that all included in this new proposal?

Ms. Newman. The new proposal, and this is something I should have said earlier, would also have a pay for performance system. People would move through the system based on their performance.

Apart from the pay system, Mr. Chairman, we are going to be taking and are taking within the government a variety of steps to ensure greater opportunity for women and minorities. That means working with colleges and universities. We are even going back now and working more with some of the high schools. We are ensuring that the training within government and the development within government, whether it is our Federal Executive Institute or otherwise, is for positions which are really there and that the training be open to women and minorities.

We are very sensitive to the importance of this, particularly given the demographic changes in the country. If we don't do something about moving people up, we are not going to be able to compete with the rest of the employers for the best and brightest of the women and minorities and immigrants.

CIVIL SERVICE TESTING

Mr. Roybal. All right now, one last question with regard to your new comprehensive plan, and that is the matter of testing.

I remember a time when one would have to take a test to get into any civil service job, and depending on that test, one would get an interview.

But I also remember the time when, if you got a high grade in your test, in your written test, it was quite possible that you could flunk or would flunk an oral test. Has that been improved now?

Ms. Newman. Back in 1982, you probably will remember the PACE exam was challenged in court in the Luevano decision. Following that, the government moved to an authority, a Schedule B authority, which allowed agencies to hire without tests, but it was only part of the consent decree while tests were being developed.

We are now at the stage in our work where we have six exams that will be started; we will start giving them in May for entry-level positions. They are for occupational groups such as Health and Safety, and Business and Finance.

But in addition to that, we would be using the Individual Achievement Record, which allows people to present information over and above the scores on the test, which will show their ability to be successful. We have looked at people who are successful, and we said, what are the characteristics of successful people in terms of their participation in community activities and Boy Scouts and their participation in a variety of things?

If those same characteristics are present, then there is a certain indication that this person may be successful.

Mr. **Roybal**. Are these the things that are part of this?

Ms. **Newman**. That would be part of the test. I don't want to mislead you. There are a variety of ways in which people will continue to come into the federal service, depending on the occupation.

Even in the days of Luevano, there were still some tests given, but I was suggesting that in lieu of the old PACE exam, we are now moving to the six exams, along with the Individual Achievement Record.

Right now we have the outstanding scholar program, which allows direct hire of students who have a 3.5 grade point average. We may move to a 3.0 GPA, because we don't believe that there's much difference in the success of people between the 3.5 and 3.0.

Mr. **Roybal**. We just heard today that one of the greatest generals of all times and one of the greatest Presidents was not number one in his class. [Laughter.]

So I don't buy this idea that you have to have a 4.0 before you can do a job.

I suppose I feel that way because I didn't have that. [Laughter.]

Maybe that is more or less a defense mechanism, but the truth of the matter is that intellectuals of our time have not been number one, Eisenhower and others are examples and we can go down the line.

I hope that in the testing that is done, that more emphasis is put on the oral interview than on the written test. They should be equally divided, I believe, and that individual should be facing a situation where if they pass their written quite high, that they will at least have a chance to pass the oral test. Failing the oral test was the case in many, many, many instances in the past.

Mr. Wolf, do you have any questions?

Mr. **Wolf**. Thank you, Mr. Chairman. I want to welcome Ms. Newman. I have a hearing, a meeting that started two minutes ago on Metro—the Metro re-authorization is coming up on Thursday, and Mr. Hoyer and I are having a meeting with some other people to try to see what we can do to make sure that that works out okay.

I am going to have to leave. What I would like to do is ask you some questions and if your answers can be fairly fast, because I am not asking this for the record. I really want to know, and then you can elaborate for the record and maybe we can talk about it.

Ms. **Newman**. All right.

PAY IN WASHINGTON, D.C.

Mr. **Wolf**. Pay reform, the status of the administration pay reform, it really does seem to me that Washington, D.C. ought to be included as one of the high cost areas.

I spoke to the head of the Advisory Commission on Federal Pay, and he agreed. What I would like to ask you is do you not think that Washington ought to be included in that?

Ms. **Newman**. Well——

Mr. WOLF. As to the cost of the housing, and do any of your staff people live in Fairfax County? Any of your staff people?

Ms. NEWMAN. They may.

Mr. WOLF. Did any of you get your tax assessment? [Laughter.]

Ms. NEWMAN. There is no way I'm going to win this. [Laughter.]

Mr. WOLF. I know. If you can look at this. I have looked at the data, and I think we are clearly in the ballpark with the other areas. You really want to have great people in the government all over. I used to be at the Interior Department. When we used to move young Park Service employees from Wyoming back to Washington, D.C., they would kick and fight to keep from coming back here, because you can't move into the Washington metropolitan area—Maryland or Virginia or the District of Columbia—and purchase a home now and have a family.

If you do, it is very tough even if you have some equity in your house somewhere else. Most want to go back to where they are from in Wyoming if they are in the Park Service or BLM or if they are in the Forest Service, so they don't want to sell that house.

They come here. The spouse, who may not want to work, is forced to go out and work. There may be a couple of small kids. It is a tough area to make it in.

I would like to ask you if you could seriously, without us going into great detail today, look and see if the Washington, D.C. area should be on list.

Ms. NEWMAN. May I make just a short observation?

Mr. WOLF. Sure.

Ms. NEWMAN. In our determination of the three areas that we did propose at 8 percent, we did look at the high labor cost, the disparities, with non-Federal pay, and then, we looked at the extent to which there was difficulty recruiting and retaining people. I want to assure you that there will be flexibilities in our pay reform system to take care of the person coming from Wyoming to here who has special skills, and they need a recruitment and retention bonus.

We are comfortable at this stage with the cut-off of the three areas that we have in the 8 percent. Using that criterion, I know that we are going to have a great opportunity to talk about that issue.

Mr. WOLF. Okay. Well, I hope that we can expand it. I don't think I could support this at all, if you didn't do that. Literally every day people come by who are having a very, very difficult time.

Sometimes people come here for the excitement of moving to Washington. But, we are finding people living in Woodbridge, which is not in my district, getting up at 4:45 in the morning, driving up 95 to the beltway, across the Woodrow Wilson Bridge, down into downtown. They leave here at 6:45 at night to avoid the traffic. They have no family life at all.

Literally they may be absentee mothers or absentee fathers. That is not a good thing for the kids. I spoke to an FBI agent in charge of the special field office out in Tysons Corner. He leaves his house at 5:15 in the morning, leaves at 6:45 or 7:00 at night. What kind of family life can that man possibly have?

They do it simply because of the housing costs, and the values are so high that they can't make it. I don't think we should demand hardship duty for somebody to move here and work for the government in the nation's capital and destroy their family life or make it so that they are never at any Little League games, no PTA, no meetings.

This area really ought to be one of the high cost areas.

Ms. **Newman**. We already have special rates, but I understand your concern under the new reform, and I am sure we will have an opportunity to review it.

Mr. **Wolf**. I would appreciate it.

JOB SHARING

The job-sharing; as you know I put that money in to begin the program. Do you have any idea when the job-sharing program will go into effect?

Ms. **Newman**. The——

Mr. **Wolf**. And I appreciate how fast you're moving.

Ms. **Newman**. The beginning steps, as you know, the analysis of the best way of conducting job-sharing, has taken place. We are planning to have a pilot here in Washington and probably three other areas.

We will be having cards going out where individuals can sign up for jobs and we can match individuals with jobs or individuals with individuals. It is our expectation that it will be up and running in the pilot by September.

Mr. **Wolf**. Great. That's good, good.

If I could give you just an idea, would it be possible to list the job openings in the Federal Job Opportunities Listing and to put maybe an asterisk next to them to show that the applicant would know it is a job-sharing spot?

Ms. **Newman**. We are planning to use the system that is in place. I don't know exactly what would be the best way of having individuals or agencies know how to do the match-up, and that is one of the things that we would look into.

Mr. **Wolf**. Well, that leads to the next question. It is important to get the word out to the agencies.

Ms. **Newman**. Yes.

Mr. **Wolf**. Because some agencies may get the word and others just don't. I remember some times when people are retiring. You will find one agency who will go through all the options and be very good, and another agency that really doesn't do a very good job.

So if somehow the agencies could get the word, and also there be some mechanism whereby the employees, with that asterisk or some other mechanism, could know what's available. They may end up actually prodding their people.

Ms. **Newman**. We are going to get a pamphlet out to the agencies about the job-sharing program, and we do feel an obligation to have people informed about it, because it is a very important program, particularly in this day and time.

Mr. **Wolf**. And I know you will do a good job. I am rushing, but I had some other comments lauding you. Frankly, you have moved so fast on the flexi-place, tele-commuting, you are so far ahead of this Congress it is not even funny, you and President Bush.

So I just want to commend you on that. The more you do, the better, because we could take 10 percent of the traffic off of the roads with tele-commuting. You could be a hero. We may elect you to some office around here.

I just want to encourage and thank you for the job that you are doing.

PLACEMENT OF AETNA ENROLLEES

The last basic question is one with regard to AETNA. You did a great job. As you know, Mr. Hoyer and I were concerned for those that missed out on AETNA when it went into collapse.

We were told that you had a hard time finding certain people, so you automatically put them in a program so they would be covered. Do you have some mechanism, or can you try to come up with some mechanism, to take care of the following case?

You might get a widow or widower who lives alone, develops Alzheimer's, or another disease. Maybe their children are across the country and really don't see them very much. I wonder if maybe we are losing people because of Alzheimer's disease who drop out and never send the form in and all of a sudden are without health insurance.

Do you have some mechanism or can you develop something that would cover people like that—somebody who just falls out of the program simply because of their condition?

Ms. NEWMAN. I am going to let Curt Smith, who is the associate director of our retirement and insurance group, speak to that, but I want to point out that I think our experience with looking for the people under the AETNA program, our attempts to use certified mail and to use piggyback mail that was going out and broadcasting and all of that, did convince us that in certain circumstances, we have to do even more.

But I think that our experience essentially did make that change and has convinced us that there are ways to get people's attention. You might want to take just a second.

Mr. SMITH. I think we have--as a consequence of the AETNA program—done this across the board in the program so that none of our retirees will ever miss health insurance for failure to respond.

Mr. WOLF. You really feel that that——

Mr. SMITH. That's what the regulations say when a plan goes out of business, which is the only time. Normally if you don't respond, you just stay where you are, that is the default position.

But the regulations say whenever we lose a client or anybody we don't hear from, we move to the government-wide option, precisely to do what you are talking about, so that none of these retired folks who are usually very senior people, lose their health insurance because they didn't understand.

Mr. WOLF. What if a person doesn't extend—maybe they are in Blue Cross or Blue Shield—doesn't renew and stops paying the premiums?

Mr. SMITH. No, no. We are safe there.

Mr. Wolf. We are safe there.

Mr. Smith. The default position is during open season; if you do nothing, you stay where you are, and the annuitant didn't have to send the premiums to us. We take them out of the annuity checks.

Mr. Wolf. Oh, okay. Good.

Mr. Smith. So I think on that——

Mr. Wolf. That sounds great, then, because I was concerned. I am sure if you did some studying you might find out that a number of those 8,000 people in AETNA, were cases of Alzheimer's disease or something like that.

I just want to make sure that nobody woke up one day and found out that they didn't have any insurance.

Mr. Chairman, I have a couple more questions but I am going to have to run. Let me just say again, I apologize for leaving, and I think you are doing a marvelous job, and I appreciate this.

JOB SHARING

I hope we can really send a message out when the job-sharing comes out, maybe even a public meeting, where you meet with the different agencies or somebody from your office meets with them to sensitize them and to let them know that the administration, is strongly in support of it. The same with the tele-commuting.

I think we are going to have a little resistance on the tele-commuting. It is a new approach, and I am finding some people say well, we have never done it this way. I think the more you encourage them, the better it will be.

And again, thanks so much and excuse me, Mr. Chairman.

Mr. Roybal. Thank you, Mr. Wolf.

Ms. Newman, I have additional questions that I am going to submit for the record. For example, we would like to know more about the appropriation in which you request authority to transfer funds to core administrative expenses.

Ms. Newman. Yes.

Mr. Roybal. Now, that would be submitted to you as well as other questions, and it will give you an opportunity then to elaborate as much as possible.

I would like to thank you and your colleagues for your testimony on this issue.

INSPECTOR GENERAL

We will now go on to another which is the Inspector General of the Office of Personnel Management. I think Mr. Conklin responds to that, and I will recognize him.

Mr. Conklin. Thank you, Mr. Chairman. It is a pleasure to be here. I have a very short statement that is written and with your permission, I would submit it for the record.

Mr. Roybal. Without objection, it will appear in the record at this point.

Please proceed.

Mr. Conklin. There are three or four points I would like to make.

It has been just about a year since the Office of Inspector General at OPM became what has been referred to as a statutory inspector general office under the Inspector General Act Amendments of 1988.

The first point I would like to make is that the support we have received from Director Newman, from Deputy Director Phillips, from Mr. Prebis and the other top management at OPM in support of our creating this new office has been, in a word, superb.

I am glad that she is here to hear me say that.

We have, in fact, been able to organize, to begin the recruitment of staff and the procurement of equipment to undertake the duties of a full-fledged inspector general's office of statutory caliber.

Our requests for fiscal year 1991 consist of two parts. With respect to trust funds, we are asking for an increase of $879,000. Of these funds, $663,000 will be used in what we call the insurance audits, the audits of the federal health insurance carriers.

What we are trying to do there is shorten the adult cycle from currently over five years, to less than five years and also to look more deeply into the benefits, the claims side of that activity.

We feel we are doing a good job on the administrative cost side and we want to look more at the claims side in the future. This will help us.

On the S&E side, we are asking for a total of $1,728,000. Of the 24 statutory inspector generals, the Office of Personnel Management's IG Office is the only one that has never in its history had a criminal investigation capability.

We have had to start from ground zero on that. We have begun that. We have started the process of recruiting and bringing onboard criminal investigators, GS-1811 series investigators. We currently have a young man down at the federal law enforcement training center at Glencoe. We are moving well on that. $530,000 of our request will permit us to move even more in that direction.

We are asking for an additional $500,000 of S&E money for improving the number and the quality of the audits that we perform in the benefit program areas, that is in health insurance, life insurance and retirement.

We created just a year ago a special unit that looks only at what amounts to nearly $50 billion-worth of programs. There was no such unit before. We think that that is both important and effective.

Finally, we are asking for $235,000 for additional internal audits of other kinds, particularly audits in the contracting area. OPM has greatly expanded contracting out in some areas. For example, in training, and there are nearly $65 million worth of open contracts there.

The Office of the Inspector General has a particular responsibility on both the pre-award and the close-out of contracts, and we certainly want our people to be available in sufficient numbers and well-trained in contract auditing.

I will stop with that, Mr. Chairman, and respond to any questions you might have.

[The information follows:]

STATEMENT OF
HONORABLE PATRICK J. CONKLIN, INSPECTOR GENERAL
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND
GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

on

FISCAL YEAR 1991 APPROPRIATIONS REQUEST
FOR THE OFFICE OF THE INSPECTOR GENERAL
AT THE OFFICE OF PERSONNEL MANAGEMENT

MARCH 27, 1990

STATEMENT OF PATRICK J. CONKLIN
INSPECTOR GENERAL, U.S. OFFICE OF PERSONNEL MANAGEMENT

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PATRICK J. CONKLIN, THE INSPECTOR GENERAL OF THE U.S. OFFICE OF PERSONNEL MANAGEMENT. I AM PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY REGARDING THE APPROPRIATIONS REQUEST OF OUR ORGANIZATION FOR FISCAL YEAR 1991.

IT HAS NOW BEEN NEARLY A YEAR SINCE OUR OFFICE ATTAINED ITS STATUS AS A STATUTORY OFFICE OF INSPECTOR GENERAL UNDER THE PROVISIONS OF THE INSPECTOR GENERAL ACT AMENDMENTS OF 1988. IN THAT TIME, WE HAVE COMPILED WHAT I BELIEVE TO BE AN OUTSTANDING RECORD OF ACCOMPLISHMENTS. WE HAVE ISSUED 155 AUDIT REPORTS, CONTAINING 300 RECOMMENDATIONS FOR IMPROVEMENT OF THE AGENCY'S PROGRAMS AND OPERATIONS, AND IDENTIFYING $11.4 MILLION IN IMPROPERLY SPENT FUNDS WHICH SHOULD BE RECOVERED BY OPM.

WE HAVE ESTABLISHED THE FIRST CRIMINAL INVESTIGATIONS ORGANIZATION EVER TO EXIST IN THE OFFICE OF PERSONNEL MANAGEMENT. THIS UNIT IS NOW ACTIVELY ENGAGED IN INVESTIGATIVE WORK ON AN INDEPENDENT BASIS, AS WELL AS IN COOPERATION WITH THE FBI AND OTHER OFFICES OF INSPECTOR GENERAL. BECAUSE OF THE EXTENDED LEAD TIME INVOLVED IN THE CRIMINAL JUSTICE PROCESS, WE DO NOT YET HAVE INDICTMENTS OR CONVICTIONS TO REPORT, BUT WE ARE CONFIDENT THAT WE WILL SOON ATTAIN THE SAME LEVEL OF RESULTS AS THE REST OF THE INSPECTOR GENERAL COMMUNITY.

WE HAVE, IN ADDITION, ORGANIZED THE OFFICE OF INSPECTOR GENERAL AS A FULLY OPERATIONAL, INDEPENDENT ENTITY WITHIN THE OFFICE OF

PERSONNEL MANAGEMENT. THE EXPANSION OF OUR STAFF TO MEET THE MANDATES OF OUR STATUTORY ROLE IS PROCEEDING STEADILY, AND WE ARE ASSEMBLING A COMPLEMENT OF DEDICATED PROFESSIONAL EMPLOYEES. WE ARE ESPECIALLY PLEASED TO BE ABLE TO INFORM YOU THAT WE ARE RECEIVING THE CONSISTENT AND EFFECTIVE SUPPORT OF OPM'S TOP MANAGEMENT. WITHOUT SACRIFICING OUR UNIQUE ROLE AS AN INDEPENDENT, OBJECTIVE OVERSIGHT AUTHORITY, WE WILL CONTINUE TO WORK IN COOPERATION WITH THE AGENCY AS THE MOST EFFECTIVE MEANS THROUGH WHICH THE SAVINGS AND IMPROVEMENTS WE IDENTIFY WILL BE ACCEPTED AND IMPLEMENTED.

OUR REQUEST FOR RESOURCES FOR FY 1991 REPRESENTS AN EXTENSION OF THE FY 1990 LEVELS, IN TERMS OF PROVIDING FOR THE CONTINUED GROWTH OF OUR PROGRAMS TOWARD ULTIMATE LEVELS WHICH WILL PROVIDE AUDIT AND INVESTIGATIVE COVERAGE TO OPM ACTIVITIES EQUIVALENT TO THAT FURNISHED BY THE ESTABLISHED OFFICES OF INSPECTOR GENERAL TO THEIR AGENCIES. OUR SPECIFIC REQUESTS FOR RESOURCE ENHANCEMENTS INCLUDE AN INCREASE OF $663,000 IN TRANSFERS FROM TRUST FUNDS TO IMPROVE THE TIMELINESS AND QUALITY OF AUDITS OF INSURANCE CARRIERS PARTICIPATING IN THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM. WITH THE ADDITIONAL RESOURCES, WE WILL BE ABLE TO SHORTEN THE TIME INTERVAL BETWEEN AUDITS OF EACH CARRIER, WHICH NOW CAN AMOUNT TO MORE THAN FIVE YEARS, AND TO IDENTIFY COST CONTAINMENT MEASURES WHICH CAN AND SHOULD BE IMPLEMENTED BY THE CARRIERS.
WE ARE SEEKING AN INCREASE OF $530,000 IN SALARIES AND EXPENSES TO EXPAND THE CRIMINAL INVESTIGATIONS PROGRAM. THESE RESOURCES WILL

ALLOW OIG TO EXTEND INVESTIGATIVE OPERATIONS BEYOND THE LOCAL WASHINGTON, DC AREA AND TO TARGET COVERAGE TO MAJOR CASES NATIONWIDE, ESPECIALLY THOSE INVOLVING PROVIDER AND SUBSCRIBER FRAUD IN THE HEALTH BENEFITS PROGRAM.

AN INCREASE OF $500,000 IN SALARIES AND EXPENSES IS BEING SOUGHT TO STRENGTHEN OIG'S AUDITS OF OPM'S OPERATION OF THE RETIREMENT AND INSURANCE PROGRAMS. THE COMPONENTS WHICH ADMINISTER THEM ARE THE LARGEST ORGANIZATIONS WITHIN THE OFFICE OF PERSONNEL MANAGEMENT AND WILL MAKE PAYMENTS APPROACHING $49 BILLION IN FY 1991 FROM TRUST FUNDS WITH ASSETS IN EXCESS OF $250 BILLION. THEY HAVE NOT PREVIOUSLY BEEN SUBJECT TO INDEPENDENT, PROFESSIONAL AUDIT COVERAGE, AND ARE CONSIDERED BY THE AGENCY, AS WELL AS OIG, TO BE VULNERABLE TO FRAUD, WASTE, AND IMPROPER USE OF FUNDS.

AN INCREASE OF $215,000 IN SALARIES AND EXPENSES WILL SUPPORT AUDITS OF OPM PROGRAMS OUTSIDE THE RETIREMENT AND INSURANCE AREA. THESE HAVE BECOME INCREASINGLY LARGER, MORE COSTLY, AND LESS SUBJECT TO MANAGEMENT CONTROL AS THE AGENCY HAS MOVED TO CONTRACT MANY OF THE FUNCTIONS IT FORMERLY PERFORMED DIRECTLY. AS ONLY A SINGLE EXAMPLE, CURRENT UNBILLED WORK ON CONTRACTS FOR TRAINING PROGRAM DEVELOPMENT AMOUNTS TO $64 MILLION, AND NONE OF THIS AMOUNT HAS PREVIOUSLY BEEN SUBJECT TO AUDIT BY ANY ORGANIZATION. IN RESPONSE TO THE DRAMATIC INCREASES IN CONTRACTING ACTIVITY, OIG MUST DEVELOP AUDIT PROGRAMS AND STAFF EXPERTISE IN THE CONTRACTING FUNCTION WHICH WILL ALLOW US TO PENETRATE THESE PREVIOUSLY UNAUDITED AREAS.

THAT CONCLUDES MY PREPARED TESTIMONY. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

Mr. **Roybal**. I would like to ask again some questions for the record.

Mr. **Conklin**. Yes, sir.

Mr. **Roybal**. Questions that will clarify some of the things that you have already stated, but I think we should clarify this matter of the resources that are being requested for various operations.

AUDITS

How much of your resource would be used for audits, for example? It is my understanding that it is in the neighborhood of $1,500,000, is that correct?

Mr. **Conklin**. Of the requests that we have on both trust fund and S&E, it will be in the neighborhood of $1,400,000, or a little less.

Mr. **Roybal**. You have stated that $500,000 were for audits. I think that was the statement that was made. For what audits are you talking about?

Mr. **Conklin**. These are audits in the health insurance operations, administrative operations in the Washington office basically, and at OPM's facility in Boyers, Pennsylvania, and other audits that are performed in the other ~~divisions~~ of OPM.

Mr. **Roybal**. Now, what about the internal audits?

Mr. **Conklin**. Yes, contract audits.

Mr. **Roybal**. $235,000 for that.

Mr. **Conklin**. Yes.

Mr. **Roybal**. So it is in excess of a million dollars for audits alone.

Mr. **Conklin**. Including the audits of the health insurance carriers, yes, that's correct. There is $600,000-plus that will be for health insurance carriers and $500,000 for audits of the benefit program administrative operations.

Mr. **Roybal**. Yes.

Mr. **Conklin**. And another $200,000 for other internal audits including the contract audits.

Mr. **Roybal**. All right, so the $663,000 plus $500,000 plus $235,000 and whatever else.

Mr. **Conklin**. Will all be on audit work, yes, sir.

Mr. **Roybal**. Will all be audit work which is in excess of one million dollars.

Mr. **Conklin**. Yes, sir.

CRIMINAL INVESTIGATIONS

Mr. **Roybal**. You also stated that you are training and will be hiring a criminal investigator.

Mr. **Conklin**. Yes.

Mr. **Roybal**. Why is this necessary?

Mr. **Conklin**. Basically the statute provides for that.

Mr. **Roybal**. I think the statute has provided for awhile, but you didn't have it.

Mr. **Conklin**. We were not covered by the statute until April 16th of last year.

Mr. **Roybal**. All right, so now there is an investigator coming aboard, and he is being trained at Glenco at the present time.

Mr. **Conklin**. Yes.

Mr. **Roybal**. With that investigator will come auditors and other investigators to investigate what?

Mr. **Conklin**. The individuals will be investigating fraud. A local example would have been the retirement fraud that was discovered in D.C. government. We will be looking for fraud in retirement programs, fraud in health care provider activities and the health insurance program, things of that nature.

We don't yet know the size of this activity. That's why we are proceeding fairly slowly as we develop this criminal investigator activity, but we think there will be a substantial amount of fraud to be uncovered.

Mr. **Roybal**. But that particular activity is going to cost you $530,000.

Mr. **Conklin**. Yes.

Mr. **Roybal**. Which is not small.

Mr. **Conklin**. It is not small, and that's just a start.

Mr. **Roybal**. I am trying to determine—is this based on the fact that there is a great need for it? Or simply because you have the authority for it and therefore you are doing it?

Mr. **Conklin**. No, no. The need for it was always there. We really didn't have the authority to pursue it. What we would have to do is turn to the Federal Bureau of Investigation or someone else to do that, and in all honesty, their priorities were different than ours.

Our feeling is that if 1 percent or a tenth of 1 percent of the people receiving health benefits, for example, engage in fraudulent behavior, that will provide us thousands of cases.

Now, based on the experience of other IG offices—Health and Human Services, Veterans Administration, Department of Labor—fraud is out there. Up until this point in time, the OPM Office of Inspector General has not really been able to mount a serious effort against fraud.

Mr. **Roybal**. It just strikes me the wrong way to know that here is a department that lived without an investigator for a long time, was able to transfer any case that should be investigated to an investigating body of the federal government; now that same entity wants to have its own investigative team.

My question is, is that absolutely necessary? Your answer is yes, it is.

Mr. **Conklin**. Yes. The statute requires an office of inspector general to identify and prosecute participants in fraud or abuse.

Mr. **Roybal**. I know, but legislators pass legislation some times that there is no requirement for. We can name one thing after another when it comes to that, but the thing is, you have determined that there is a need and that the government would save money if it had its own investigative body within the Office of Personnel Management.

Mr. **Conklin**. We fully expect to have convictions and recoveries that will provide——

Mr. **Roybal**. All right, next year—and I hope to be here next year—I'm going to ask how you are doing with that program. Again, I am going to have to be convinced that it is absolutely necessary.

Mr. **Conklin**. Yes, sir, we will certainly try to——

Mr. **Roybal**. The only thing I understand is the bottom line.

Mr. **Conklin**. Yes, sir.

Mr. **Roybal**. Right?

Mr. **Conklin**. Yes, sir.

Mr. **Roybal**. So I will be asking you those questions for next year. I suppose that that is the reason for your request for an increase over 1990 of $1.7 million.

Mr. **Conklin**. That is part of the reason for that.

Mr. **Roybal**. How much of the reason is it?

Mr. **Conklin**. The criminal investigation portion of the request is $530,000. At present, we expend probably less than $100,000 on our current investigative activity. This is prior to April of last year.

In the preceding fiscal year, we probably spent less than $100,000 on investigative activities. These were individuals who were not criminal investigators, people who performed investigations of an administrative nature, for example.

Mr. **Roybal**. Would you also be investigating, for example, any function or administrative functions which are funded by transfers from one trust fund to another?

Mr. **Conklin**. You would have to give me an example, Mr. Chairman.

Mr. **Roybal**. You will be investigating any transfer of funds from one jurisdiction to another within the department of Office of Personnel Management.

Mr. **Conklin**. Investigation of these types of functions at the Office of Personnel Management will not exceed current levels.

Mr. **Roybal**. Now, what I can see, and I may be completely wrong, but what I can see is that the Inspector General is constantly reviewing the operations of everybody else, and they might get to a point where due process is not considered in whatever investigation or result thereof is made.

Do you think that the individual's rights would be protected in the process?

Mr. **Conklin**. If the rights of the individuals are not protected at all times, Mr. Chairman, I and my colleagues will have failed miserably.

Mr. **Roybal**. If the rights of the employee are protected at all times, and an investigation is conducted with due process in mind, then perhaps what is being contemplated is in order.

As I said, next year we will talk about it more.

Mr. **Conklin**. Yes, sir.

Mr. **Roybal**. All right. Mr. Akaka, do you have any questions?

Mr. **Akaka**. Thank you very much, Mr. Chairman.

We certainly welcome you, Ms. Newman and Inspector General Conklin.

I have only questions on new regulations for COLA calculations in Hawaii, Alaska and other areas outside the mainland U.S. [Laughter.]

I thought I would quiet you. [Laughter.]

COST-OF-LIVING ALLOWANCES

I understand that OPM is in the process of implementing new COLA regulations for what we call nonforeign areas—outside the continental United States.

We have had past experiences where Hawaii has both benefitted and been adversely impacted by recalculation of the COLA, but these changes are of great concern to our federal employees in Hawaii.

The law authorizes the COLA program based on living costs substantially higher than in D.C. The OPM methodology only accounts for relative price levels, not relative costs-of-living. This methodology understates, we feel, the actual cost-of-living by ignoring the non-price factors.

My questions are, what is the status of the cost-of-living allowance program, and when do you intend to announce the new rates?

Ms. **Newman**. I am going to ask Claudia Cooley, who is the associate director responsible for that program, to talk about the status, but I want to say to you that we, as you know, are looking at the whole pay system.

In looking at the whole system of pay, we see a need to move to a locality-based system. We may want to re-visit, in everybody's interest, the way in which we determine what the pay rates ought to be, what we should take into consideration, and we need to ensure that the agencies in those areas have the tools to recruit the best, and cost-of-living allowances may not be the only tool that we ought to consider.

We ought to look into various other ways to address the problems as you see them, so I don't mean to be throwing out the possibility that we are talking about not having cost-of-living allowances in non-foreign areas, but I do think that when we are looking at the whole system, we need to ask some questions about what are the best tools.

But I will ask Ms. Cooley to talk about it before reform.

Ms. **Cooley**. Well, we have been working a lot, as you indicated, on the issue of the methodology for the cost-of-living allowance program, and we have also been involved over the years in extensive litigation relating to that program.

I know in trying to look at this question myself, that the whole issue of trying to measure the cost of living is a very difficult business, to measure it consistently and measure it fairly from one place to another over time.

There are many organizations and outfits involved in measuring cost-of-living, and every time they do it, you find that different results come up, different results for the same place.

Really trying to make a precise, exact measurement is a very, very difficult business, and I think people, in good faith, can reach different conclusions about what those numbers should be.

But we have taken this issue very seriously, and we have recently proposed changes to the methodology for the cost-of-living allowance and have received comments on that.

I would be happy if we could be helpful in terms of providing for the record the kinds of changes that were made in the proposed regulations, or that are contemplated because of the comments that we have received.

We are trying to have a methodology that is fair and one also where we are going to be obtaining the services of an outside contractor to help us with the actual conduct of the surveys, so that we have a more impartial, if you will, or at least what is perceived to be impartial, individual or organization involved in actually conducting these surveys and collecting the information as well as the change in the methodology itself so that everyone, I think, may be more comfortable that it is indeed an objective and a balanced assessment.

So I don't know if you are familiar with some of these changes we have been talking about in the methodology, and we would be happy to speak with you or your staff about those changes.

Mr. **Akaka**. Yes, some of the questions come about because of the need for, I guess you could say, definition. For instance, the question that might be asked is why does OPM exclude non-price factors in the calculation of cost-of-living differentials?

Ms. **Cooley**. Well, I don't think I am prepared to answer that——

Mr. **Akaka**. Yes.

Ms. **Cooley** [continuing]. Here, but I will certainly provide that for the record, because I want to make sure that I give you a correct answer in terms of what is considered price versus cost.

LOCALITY PAY VS. COLA

Mr. **Akaka**. And the last question along that line is how will the administration's locality pay, and pay performance initiative, affect the COLA program?

Ms. **Cooley**. That is still open. One option is certainly to leave the COLA in place and reform the pay around that.

One other option is for us–to look at what it is we are trying to accomplish with pay reform, and we may need to seriously consider folding COLAs into that. That may not be as popular an option as the first one, but I don't want to leave the impression that that isn't something that we ought to talk about.

Mr. **Akaka**. Yes. I am sure you know that Representative Ackerman has a reform bill which would maintain the present COLA program.

I guess we would also like to look at improvements, too, to the program, but if you can provide that information, we would certainly appreciate that.

I have some other questions that I will submit, Mr. Chairman.

Mr. **Roybal**. Thank you very much.

Mr. **Akaka**. Thank you, Ms. Newman and Mr. Conklin.

POSSIBLE EFFECT OF BUDGET CUTS

Mr. **Roybal**. I have just one more thing I would like to discuss with Mr. Conklin, and that is the matter of your budget, your budget increase.

Now, this year we are going to have a tremendous amount of problems, a number of problems that will have a direct impact on what the appropriation is going to be. It is anticipated that our

302(b) allocations is not going to be the most favorable one that we have ever received.

In other words, it will be reduced, and if that is the case, we will not be able to make these appropriations.

The question is, what would happen if we were unable to increase your request by $1.7 million?

[Pause.]

Mr. **Conklin**. It would be a very difficult time. I expect we would continue to soldier on, operating basically at the present level.

We believe there are millions of dollars in recoveries that are out there to be discovered, both through the audit process and through the investigations process. It is dollars in recovery to the government.

Ms. **Newman**. May I answer from the point of view of OPM?

Mr. **Roybal**. OPM.

Ms. **Newman**. Yes. Mr. Chairman, I would divide the requests into three categories—those parts of the request that deal with the immediate servicing of the public, and then those portions of the request that deal with administrative changes in support of administrative systems and then the third, preparing for the future.

Although I would like to say that we need every dollar that we have asked for in preparing for the future, I would have to be honest and say that our first obligation would be in immediate servicing of our clients, which means then that we would need to have first those dollars that would allow us to address the workload of the retirees, the annuitants and those in the health benefit system, the $460,000 for example, to address the workload in the retirement insurance group.

I would also put into that category something which is a little different, namely staff training for the people in the retirement and insurance group, because without that training, we cannot argue that we are going to have the quality and the timeliness of the service to the public, as we should.

We have an obligation to conduct investigations for the rest of government, and there is a certain amount of that that I would put into that first category.

We have a material weakness in our accounting system and unfortunately, with reductions in the past, what we often do is push down correcting and automating the accounting system.

Having said that, however, if you did not see fit to give us the full request, I would put into that second group the $259,000—and I say, I put that in the second group because that is easier to push down than our not servicing the needs of the public.

And finally, although I don't like to admit this, but there are requests, for example, the $1 million for training the front line across-the-board, which I believe has a great deal to do with how the government serves the public, it has a great deal to do with the image of the public, but that does fall into the category of preparing for the future.

If we were going to have to make some judgments about what comes first, I would say we would have to deal with the present first and servicing the annuitants first, and hope that we can have the additional amount so that we are not mortgaging the future.

Also the requests for the advisory committee on public service would fall into that third category.

Mr. Chairman, we are asking for $1.3 million for pay reform. That needs to be addressed. That needs to be addressed at the outset.

So I haven't been too helpful, I know, but I want to make the point that we are pushing up to the edge and that the first obligation, we do recognize, is servicing the employees and the annuitants and the job applicants, and that some of our initiatives that go to the future may have to suffer.

I will argue strongly against it, if that is presented to me.

Mr. **Roybal**. What I'm trying to get at, what I'm trying to do is send a message out to those coming before this committee. The message is that this year we may not be able to comply with your requests.

It isn't the committee's fault. If we don't get that allocation, we won't be able to appropriate it, and I am asking, almost everyone that comes before this committee, what would happen if you don't get that increase?

Ms. **Newman**. Yes.

Mr. **Roybal**. Because I would like to have that in the record and then, when we do the mark-up, we will go back and read it, find out what it is that would be happening if that amount had to be deleted, whether we can grant half of it or a third of it or a fourth of it, whatever the situation may be.

But all of this is going to be dictated to us by another committee, by the budget, and by the requests made by the administration and the budget committee and everything else.

And then when it comes to the appropriations, then we get our allocation and we have to act accordingly.

Ms. **Newman**. Well, the——

Mr. **Roybal**. I don't like to discuss this too much, because we don't really know what's going to happen and I don't want to have you believe that we, in this committee, are not willing to agree with you that what you are requesting is justified. We are, and I think you should have the best of everything that is possible to get to do your job most efficiently.

But we don't know, Ms. Newman, what is going to happen, and that is the only reason I am asking this question. I hope that we are all lucky and we get the proper allocation. We are going to take your requests under serious consideration and act accordingly.

Ms. **Newman**. We have, as you know, Mr. Chairman, the pressure of the absorption of the pay raises—both the executive and the general pay raises. That, in conjunction with the increases in the workload and the annuitant population is that we could very well end up with greater backlogs and inefficiencies in the system, and this you are well aware of.

It would be preferable, if we do have to absorb a cut, that we would have some amount of flexibility of allocating the resources within that, recognizing what is the workload in one area as opposed to another.

Mr. **Roybal**. Ms. Newman, I never did believe that an agency could do more with less. This agency can't, either, but we will take a good look at it and we will have to act accordingly, when the time comes.

Ms. Newman. Yes.

Mr. Roybal. Thank you. Yes, Mr. Akaka.

Mr. Akaka. May I?

Mr. Roybal. Yes, go right ahead.

BUDGET PROPOSALS

Mr. Akaka. In the pay reform, you mention part of it for the annuitants. Is that part of the pay reform?

Ms. Newman. No, on the pay reform, we would be talking about splitting the general schedule into a nationwide system and a locality-based system with certain flexibility, but we are also, at the same time, proposing reform of the health benefit system, moving to a self-insurance with third party administrators and having two risk pools—one for the employees and the other for the annuitants and Medigap and voluntary buy-in to Medicare.

RETIREMENT PROCESSING TIMES

Mr. Akaka. May I just express a concern, Mr. Chairman, about the annuitants. I have heard this over a period of time in Hawaii, and I am sure it is heard in the rest of the country, about retirees and the time it takes for them to receive their first check after they retire.

Ms. Newman. Oh.

Mr. Akaka. I have heard from many different sources. Some say it takes nine months, some say six.

Ms. Newman. No.

Mr. Akaka. I am not certain about that. I am just expressing a concern, if that is true.

Ms. Newman. Right.

Mr. Akaka. You know, we need to look at that.

Ms. Newman. May I suggest that it has been or had been a problem in the past. Over time, the Office of Personnel Management has taken steps to bring down from 65 days to right now, to 55 days for the full determination.

But in the interim, between 12 and 14 days from the time that we receive the full information from the agencies, a person may receive an interim check. This has come down from 20 days, so we are moving to a place where people can reasonably be expected, once the Office of Personnel Management gets the information from the agency—and I want to let you know that that was part of the problem, but we now have about 78 percent of the agencies who are getting their information in within 30 days.

But that was not the case—how long ago?

Mr. Prebis. Four years.

Ms. Newman. We have two parts of the system. We have to get the agencies from which a person retires to get the information to us, but then we have to rev up our system so once we have the information, we would get interim checks and then the regular checks out after the full documentation has taken place.

Mr. Akaka. So I guess that period from the agency to you becomes critical.

Ms. **Newman**. Well, we have taken steps to get guidance out to the agencies and to monitor and provide technical assistance, and then we send out reports so everybody sees where they are.

The District of Columbia government has a long way to go, but most of the other agencies have moved very close to 30 days or less in submitting their applications.

Mr. **Akaka**. Well, I will pass on the information that you are working on it.

Ms. **Newman**. Yes.

Mr. **Akaka**. And you have already improved it.

Ms. **Newman**. And we can submit a full report on that for the record. We will do that.

Mr. **Akaka**. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Roybal**. Thank you. I'd like to thank you, Ms. Newman, and your colleague for their testimony on this section.

CIVIL SERVICE RETIREMENT FUND

We would like to go now to payment of Civil Service Retirement and Disability Fund.

Ms. **Newman**. Yes.

Mr. **Roybal**. We have, after that, two other sections as three in total that we still have to hear from.

The payment to Civil Service Retirement and Disability Fund, what I would like to do is to ask one question on each one of these, and then submit the rest so you can answer those in writing.

Ms. **Newman**. All right.

Mr. **Roybal**. So in order to get started on this matter, we would like to have you explain very briefly the purpose of this appropriation and how the appropriation request is computed.

Ms. **Newman**. The total payment for fiscal year 1991, the request is $17.8 billion. Our changes between '90 and '91 are as follows: there is an increase for the pay raise, to amortize that over a 30-year period. To do that, we are requesting $475,000,000.

Mr. **Roybal**. It is $475,373,000.

Ms. **Newman**. That's right.

Mr. **Roybal**. That is an increase over fiscal year 1990.

Ms. **Newman**. That's right, because we are taking the pay raise, the '91 pay raise, and amortizing it over a 30-year period, so for '91 that would be the $475 million.

Mr. **Roybal**. So for '91 actually, the request is for $5 billion.

Ms. **Newman**. Five point seven.

Mr. **Roybal**. Yes, $5.7 billion altogether, yes.

Ms. **Newman**. Yes, yes. Did you want to go through the other parts of it, or——

Mr. **Roybal**. No, because you can answer for the record all the rest of them, and we will take the others and do likewise.

Ms. **Newman**. Yes.

ANNUITANT LIFE INSURANCE

Mr. **Roybal**. The other is the government payment for annuitants, the employee life insurance benefits.

Ms. **Newman**. Yes.

Mr. ROYBAL. Under that section, please explain the way the current life insurance system for federal employees, federal retirees currently works in contrast with the way it previously operated.

Ms. NEWMAN. The life insurance?

Mr. ROYBAL. Yes.

Ms. NEWMAN. Now, we are asking in '91 for $8.2 million, and the difference, there is an increase of 5.7, but that is a growing——

Mr. ROYBAL. My papers don't coincide with yours.

Ms. NEWMAN. You are talking about life insurance or health?

Mr. ROYBAL. I am talking about life insurance benefits.

Ms. NEWMAN. Life insurance benefits. Well, I have a '91 total—yes, that's the same one I have—the '91 total of 8.2.

Mr. ROYBAL. And I have 8.7 with your request for 1991. I would rather take the 8.2.

Ms. NEWMAN. Oh, that is the—okay.

Mr. ROYBAL. Is that correct?

Ms. NEWMAN. This is the outlays. Eight point seven is the budget authority.

Mr. ROYBAL. And the increase is $6 million.

Ms. NEWMAN. Right, and that, Mr. Chairman, has a lot to do with the growing population of the retirees up to age 65.

Mr. ROYBAL. So the retirement system then for any employee is based on age and not on age and length of time of service.

Ms. NEWMAN. It is a combination.

Mr. ROYBAL. All right, explain that, please.

Ms. NEWMAN. Yes. Do you want to answer that?

Mr. SMITH. Yes. Maybe just a quick word, because this account was first created in 1990, so this is a new one. Until then you paid your life insurance premiums until you retired and you didn't pay any more as a retiree, and at age 65, your insurance reduces to 25 percent of its original value.

In 1980 a number of changes were made to the life insurance program, mostly to make it more attractive to younger employees. One of the things that happened was that beginning in 1990, retirees have to pay for their life insurance until they turn 65.

We are sort of the employing payroll office for these retired people, and that is what this money is for. The insurance premium is set, the retiree pays two-thirds of it, and the government pays one-third. This amount of money represents the one-third government contribution to life insurance for our retired population, under age 65.

As I said, the first time you appropriated the money was 1990. There is a big jump in '91 because the effect is just beginning to show its full effects.

Mr. ROYBAL. The other questions we will submit for the record.

Ms. NEWMAN. All right.

ANNUITANT HEALTH BENEFITS

Mr. ROYBAL. In the last one—this is the government payment to annuitants—again, the employees' health benefits are included. This is the health benefits and not the life insurance.

Ms. NEWMAN. Total obligations are $3.9 billion with new budget authority of $3.5 billion.

Mr. **Roybal**. But there is a decrease in this final request.

Ms. **Newman**. Well, we have a combination of things here, Mr. Chairman.

First of all, there is the increase in the premium rates which would result in $598 million, but there is a decrease for the annuitants under the retired employee health benefits program which allows them to choose, and that is $569,000.

But at the same time, we are planning to propose legislation which would impact our request here. As I said in my opening statement, we want to eliminate the hidden subsidy for the Postal Service and the District of Columbia.

If we do that, if we are able to do that, there would be a reduction of $689 million for the Postal Service and $37 million for the District of Columbia.

Mr. **Gunnels**. I think you are talking outlays, and this is an appropriation request, so we have to consider it on an appropriation, not on an outlay basis.

Ms. **Newman**. Right.

Mr. **Gunnels**. So this shows that your appropriation request is $217 million less than 1990, without regard now to outlays.

Mr. **Smith**. Yes.

Ms. **Newman**. Yes.

Mr. **Smith**. The money is appropriated for whatever year we actually spend it in, and we all had a terrible scare back in '81 or '82, when we thought this account might run short, so the appropriation has been slightly above the estimates.

We are drawing down some of that money. We are aiming for a $300 million balance in that appropriated account at the end of the year as our safety margin so we never run out of money to pay the health benefits for our retirees.

Even having that $300 million target, we are able to use about $400 million, so that we are down from—well, if you look at it, we had 3.7 in '90. We actually think we will spend 3.9 in '91, but we are only asking for 3.5.

It is because the estimates of the appropriations have been over what we actually spent in the last few years, and we are proposing to use that money and ask for a lesser amount of money.

Mr. **Roybal**. As a result of this, the fact that there is a reduction, will it result in anybody losing benefits?

Ms. **Newman**. No.

Mr. **Roybal**. Or reducing benefits?

Ms. **Newman**. No.

Mr. **Roybal**. I think that is the main concern of this committee, that something like that may happen because there is a reduction.

Mr. **Smith**. We will still have a comfortable margin.

Mr. **Roybal**. All right. The rest of the questions will be submitted for the record. We would appreciate you answering that as soon as you possibly can—we hope this week.

We would like to thank you and your colleagues for your testimony. Let me tell you that your office is one of the most interesting offices that comes before this committee, because it deals with individuals, with human beings. There are a great deal more discussion we would like to have and questions that we would like to ask, but time does not permit it.

But again, thank you for your testimony and we wish you all the success.

Mr. Gunnels. I have questions from other members, Mr. Chairman.

Mr. Roybal. All right, other members have also submitted their questions, and we will submit them to you for your answers.

Ms. Newman. Thank you very much.

Mr. Roybal. Thank you very much.

[Questions and answers for the record and the justifications follow:]

DRUG TESTING

Mr. ROYBAL. Thank you, Ms. Newman.

I do have some additional questions for you. First, what is the current status of the drug testing program for Federal employees?

Ms. NEWMAN. The agencies are moving forward to implement their Drug-Free Workplace plans in conformity with Executive Order 12564 and section 503 of the Supplemental Appropriations Act of 1987. All of the agencies in the first tier of agencies whose plans were certified to the Congress under section 503 have notified their employees of their plan and have at least begun the bargaining process with Federal employee unions with regard to the impact and implementation of their plan. Several other agencies have completed the steps necessary before testing can begin, but have been enjoined from proceeding further in a number of United States District Courts around the country. OPM has begun its program and conducted two random test runs and one reasonable suspicion test before being enjoined from proceeding further with random and post-accident testing by the U.S. District Court for the Northern District of California.

The Director of the Office of National Drug Control Policy issued his National Drug Control Strategy on September 5, 1989. In the National Strategy, he directed the agencies whose plans had already been certified to the Congress by the Department of Health and Human Services (HHS) to begin implementation no later than April 5, 1990.

As HHS bears responsibility for certifying the plans to the Congress, HHS can provide an up-to-date list of the status of the agency plans. Our most recent information from HHS reflects the following: All of the 42 certified tier I agencies have issued general 60-day notices to their employees notifying them of the agency's plans to implement employee drug testing. All of those agencies have at least begun to fulfill their impact and implementation bargaining obligation. Of those agencies, the Department of Justice, the Immigration and Naturalization Service, the Department of Veterans Affairs, the Department of Energy, the Labor Department, the Department of Agriculture, the Department of the Interior, the Department of Education, the National Aeronautics and Space Administration, the Executive Office of the President, the General Services Administration, HHS, the Navy Department, the Department of the Air Force, and OPM have issued specific 30-day notices advising employees in testing-designated positions of the random testing program and, subject to injunctions entered by various courts around the country prohibiting drug testing, are either ready to proceed with testing or have begun testing.

The tier II agencies, as defined under the Act, are already conducting tests, unless they have been enjoined from doing so. Tier II agencies include the Department of

Transportation and the Department of the Army, among others.

All but 7 of the tier III agencies, the remaining Federal agencies not falling into the above two tiers, have submitted their Drug-Free Workplace plans for certification. Unlike tier I agencies, the tier III agencies need not be certified in tandem, but may proceed separately to implement testing programs upon HHS certification. At present, all but 4 of the submitted tier III agency plans are nearing final HHS certification or have already been certified.

FEDERAL PAY

Mr. ROYBAL. You recently announced a proposed total reform of the entire Federal civilian pay system. Will you comment on the highlights of your proposal? Why do you think that would be a better system than the one now in use? Do you believe it would be less susceptible to abuse and favoritism? Does it provide better upward mobility for Government employees? Would your system save the Government money? How much? Would there be an annual review of Government pay as under present law?

Mrs. NEWMAN. Since the details of the proposal are still being worked out, I am not in a position to be completely responsive to all of your questions. However, the key features are the restructuring of the monolithic General Schedule and the establishment of two basic pay systems. Jobs for which recruiting is conducted on a local basis, such as clerical and technical jobs, would be paid from local salary schedules. Jobs with a nationwide basis for recruitment, such as professional and administrative jobs, would be paid from a new national salary schedule. A number of new differentials, allowances, and other pay flexibilities would be adopted to supplement the two basic pay systems. Pay increases at the time of a schedule adjustment and advancement through the rate range would both be based on performance. The new system would have the advantage of spending scarce payroll dollars more wisely by relating pay to the relevant labor market; providing tools to attract, retain, and relocate critical skill workers; strengthening the link between pay and performance; and building credible and enduring pay adjustment methodologies and processes.

Mr. ROYBAL. The Advisory Committee on Federal Pay suggested that geographic pay differentials made sense. What is your view of this issue?

Ms. NEWMAN. We strongly endorse the need to restructure the existing system to provide for geographic variations in pay. There are different ways and degrees of doing this. Under the Administration proposal, a system for professional and administrative jobs would have a nationwide basic pay scale with an option for differentials in exceptionally high labor cost areas. Clerical and technical jobs would have local pay scales. As an interim measure before moving to a new system, the President's budget provides for differentials in those metropolitan areas with the most serious staffing problems and largest pay disparities with the non-Federal sector.

Mr. ROYBAL. What is the function of OPM regarding annual pay adjustments for Federal employees under present law? Please explain how the process works. How do you work with the pay advisory panels? Who are the President's pay agents? Has the President ever accepted the pay agent's recommendations in full?

Ms. NEWMAN. The Directors of OPM and OMB and the Secretary of Labor jointly serve as the President's Pay Agent. The Pay Agent annually submits a report informing the President of the appropriate adjustments needed to achieve pay comparability based on a comparison of Federal and private sector pay rates.

The program begins each year with the BLS survey of private enterprise pay rates for a variety of jobs that are representative of Federal jobs and work levels. The Pay Agent's staff drafts the job descriptions used by BLS in the annual survey, analyzes the data, constructs comparability paylines and salary schedules, prepares the cost estimates, and consults with employee organizations.

Essentially all of the administrative overhead required in the preparation of the Pay Agent's report is borne by OPM.

The Federal Employees Pay Council, composed of five members who represent the larger Federal employee organizations, has not wished to meet with the Pay Agent since 1982. The Pay Agent does ask for, consider, and include the written views of all interested Federal employee organizations in its report to the President.

The Pay Agent also meets with the Advisory Committee on Federal Pay each year. The Committee is an independent establishment composed of 3 members not otherwise employed by the Government. Their job is to review the Agent's report, consider further views of employee organizations and other Government officials, and report their findings and recommendations to the President.

The Pay Agent makes a technical comparability recommendation each year which the President has always accepted as an accurate finding of what pay comparability would require. In recent years, in fact, the unions and the Advisory Committee on Federal Pay have not disagreed with the Pay Agent's comparability recommendations. The President, however, has the authority to submit to Congress an alternative to the comparability findings if he feels that a national emergency or economic conditions affecting the general welfare justify not making the comparability adjustment and doing something else instead--such as limiting the increase, or delaying it, or both. The President, rather than OPM or the Pay Agent, is responsible for making the decision on an alternative plan.

The first comparability report by the Pay Agent under the Federal Pay Comparability Act of 1970 was for fiscal year 1973. The President implemented the Pay Agent's findings in full in fiscal years 1973, 1974, 1975, 1977, and 1978. The President did, however, propose delaying the effective date of the pay raise by 2 to 6 months in fiscal years 1972, 1973, 1974, and 1975, but Congress disapproved each of those alternative plans and the full comparability increase was made as scheduled. The last full comparability increase was in October 1977.

I would be pleased to furnish for the record a table showing the history of both the Pay Agent findings and the adjustments (copy attached).

SPECIAL SALARY RATES

Mr. ROYBAL. How has the authority to adjust certain pay rates which was granted to OPM by Congress been utilized?

Ms. NEWMAN. Public Law 101-136 extends through fiscal year 1990 certain additional special rate authorities first granted to OPM two years ago. In addition to higher private sector pay, the law now allows OPM to consider staffing problems caused by higher pay in the public sector (including pay under other Federal pay systems), remote worksites, undesirable working conditions, or any other circumstances OPM may identify for the purpose of establishing special rates.

This authority has proven to be invaluable in resolving agency staffing problems by allowing OPM to establish special salary rates for all positions at two remote locations at which agencies were experiencing severe staffing problems: Fort Irwin, California; and Johnston Island, a man-made island in the Pacific Ocean. It has also been used to allow OPM to establish nationwide special rates for non-General Schedule positions (the Secret Service Uniformed Division and the U.S. Park Police) to resolve agency staffing problems caused by higher State and local government pay rates.

STAFFING

Mr. ROYBAL. Do you have an adequate pool of qualified personnel from which you can hire new employees?

Ms. NEWMAN. No, we do not have an adequate pool in many highly specialized or technical occupations and in many local labor markets where the private sector demand for even semi-skilled and unskilled workers outstrips the available supply. Special recruiting and hiring programs coupled with special pay rates tailored to occupations and locations experiencing the greatest difficulty have thus far kept the shortfall from reaching grave proportions, but two major studies, Workforce 2000 and Civil Service 2000, predict a steady decrease in the supply of qualified, and especially well-qualified, personnel in the coming decades.

EMPLOYMENT TESTING

Mr. ROYBAL. For many years there was a test (or tests) that people could take to qualify for Government employment. Are there such tests now?

Ms. NEWMAN. Yes, but our current examining procedures are much more diverse than the lingering concept of "the civil service test" would suggest. Selection tests continue to be used in the assessment of applicants for Federal employment. Typically, these tests are used for the assessment of job-relevant abilities for entry-level positions for which there are no educational or experience requirements. Written tests are not required for entry-level positions which have specific requirements, for example, chemist, accountant, etc. Nor are written tests required above the entry level. For these positions assessment is done through evaluations of education and experience.

Mr. ROYBAL. Are additional tests being developed?

Ms. NEWMAN. New tests are being developed at present in order to incorporate new testing technologies into all of the major test batteries we use.

Also, we have developed new tests for the 90+ professional and administrative occupations previously covered by the Professional and Administrative Career Examination (PACE). A set of six new examinations is scheduled for implementation on June 1. These six examinations (covering six occupational groups) replace the system used for staffing these positions since PACE was discontinued in 1981. The post-PACE system relied on job-specific examinations for seven of the most populous occupations and a special appointing authority, Schedule B, for the remaining occupations.

Mr. ROYBAL. How do most people enter Government service?

Ms. NEWMAN. Most people who enter Government service do so through competitive examinations administered by OPM or by individual agencies under OPM-delegated examining authority. In FY 89, of the selections into the competitive service, 38 percent (47,079) were through delegated examining.

TRUST FUND ADMINISTRATIVE EXPENSES

Mr. ROYBAL. Each year, in addition to your appropriation, you request authority to transfer trust funds to cover administrative expenses. How are these amounts calculated? What has happened when the amounts requested have been above or below the actual requirements? Why is it that you request significant increases in transfers of funds each year? Why do you want those funds to be made available until expended?

Ms. NEWMAN. The amounts requested reflect our best estimate of the funds necessary to pay for the staff, equipment, and services necessary to administer the Civil Service retirement and insurance programs. Our needs are calculated on a line item basis, in the same manner that the operating budgets for most Government departments and agencies are formulated.

The limitation on transfers from trust funds is subject to the same provisions of the Anti-Deficiency Act that apply to regular appropriations. If, during the course of the year, the limitation appears to be insufficient to meet operating requirements, a request for supplemental authority must be forwarded to Congress or actions must be initiated to reduce spending rates. If a request for additional funding is not granted, we are obligated to adjust our rate of spending so as not to exceed our existing limitation. When our approved limitation exceeds current requirements, the unused limitation, which is the authority to transfer monies from the funds during a given year, "lapses" in the same manner as annual appropriations and the unspent monies remain in the trust funds for the payment of future benefits.

As is the case for most other Government agencies, our operating costs have risen over time due to salary increases and inflation. More significantly, Congress has mandated numerous program changes in recent years that have significantly increased the volume and complexity of workloads that OPM must process on an annual basis. Most of the increase in FY 1991 will be used to provide a comprehensive, ongoing training program aimed at formally reviewing these changes and improving the skills and productivity of staff assigned to the retirement operations. In addition, a large portion of the increase is associated with expenditures for the Federal Employes Retirement (FERS) Automated Processing System (FAPS) Project to design and install the system's ADP platform.

Of the $83.5 million requested for transfers of trust funds, we are requesting that $800,000 remain available on a no-year, as opposed to an annual, basis. These funds will be utilized to design, develop, and implement the automated recordkeeping system supporting the new Federal Employees Retirement System. Authorizing these funds on a no-year basis will minimize the contract inefficiencies that occur when the scope of the project tasks must be restricted due to limited resources available within a particular fiscal year. It will also eliminate the possibility of forcing premature contract commitments by the close of the fiscal year to avoid the lapse of budget authority.

RETIREMENT PROCESSING DELAYS

Mr. ROYBAL. There has been considerable adverse press coverage about the long delays in starting retirement payments after a person has retired from Government service. The Committee has received a number of complaints about this matter. What causes this problem? How long does it take your office to process a retirement case? What are you doing to reduce this backlog? Can you issue interim or partial payments so people who retire won't be penalized through no fault of their own?

Ms. NEWMAN. In order to alleviate financial hardship during the time required for adjudication of retirement claims, OPM authorizes recurring interim payments to all annuitants who are clearly entitled to retirement benefits. These recurring interim payments are generally about 85 percent of the full monthly benefit, and up to 95 percent if the annuitant elects the alternative annuity option. Recurring interim payments are authorized within 12-14 calendar days after OPM receives a complete retirement package from the retiree's employing agency. Approximately 95 percent of the retirement packages received from agencies provide sufficient information to begin an interim payment. Check processing by the Treasury Department and delivery by the Postal Service require 8 to 10 additional days. The overall processing timeframe is thus typically 20 to 24 days from the date OPM receives the retirement records from the agency to the date that the retiree receives the first interim annuity payment. For fully-documented cases, that is, cases in which all necessary paperwork is available for final adjudication, the claim is finalized within 50-55 days. The time for each claim varies according to how long the retiree takes to make the alternative annuity election, a processing time we cannot control. OPM processing times have remained constant during the past year.

One of the major causes for the delay in the issuance of the annuitant's first check is the quality of retirement submissions from the employing agencies. In the case where a retirement package is not complete, we must track down additional information before we are able to process the claim. In recent years, the Retirement and Insurance Group (RIG) has been engaged in a major initiative to strengthen agencies' retirement program management and retirement counseling functions. We have, through various means, placed greater accountability on agencies for timely and accurate processing of benefit applications. We have also prepared various job aids for benefits application processing, as well as informational publications for use by agencies and employees including the series of Retirement Facts leaflets, the Thinking About Retirement pamphlet, and the Employee Handbook for CSRS retirement applicants. We published a CSRS pre-retirement counseling guidebook in 1989 and provided training to approximately 200 agency personnelists on how to use it. A FERS pre-retirement counseling guidebook is now being printed. In addition, we are in the midst of issuing a new Federal Personnel Manual Supplement 830-1, entitled the CSRS and FERS Handbook for Personnel and Payroll Offices, which will provide agency staff with current and comprehensive information on retirement policy and procedures.

We have also established a network of Agency Headquarters Retirement Counselors, who are responsible for overseeing retirement programs administration and retirement counseling activities on an agency-wide basis. These Headquarters Retirement Counselors regularly participate in RIG-sponsored meetings and receive various RIG issuances such as Retirement Counselor Letters to keep them abreast of recent developments in the retirement and insurance areas. The committee of Headquarters Retirement Counselors serves as a network for sharing information and addressing common problems. Each Headquarters Retirement Counselor is responsible for establishing and managing an internal network of retirement counseling within his or her own agency.

In addition, it should be noted that the President's Council on Management Improvement (PCMI) recently completed a report making recommendations to improve retirement processing within agencies and across the Government. We will give this report and other improvement proposals careful attention.

APPROPRIATIONS FREEZE

Mr. ROYBAL. What impact would it have on your operations if the Committee could not grant your requested increase?

Ms. NEWMAN. Reform of the Federal pay system is our first priority. Should our request be denied, we would continue to implement pay reform initiatives more slowly and at the expense of other programs. In the event new additional funding for pay reform is not provided, I would have to consider shifting resources from other programs--a step I am reluctant to take since I am committed to sustaining the level of current services to our clients.

After pay reform, my priorities are: first, the elimination of NAC/NACI background investigation case backlogs; second, acquisition of a commercial core financial management system; and third, implementation of a training initiative to improve front-line service to the public.

The effect of failure to receive funding on specific initiatives varies by initiative.

For example, the pay problems facing the Government are serious and widespread. Delayed implementation of pay reform would further erode the Government's ability to recruit and retain a qualified workforce.

The request for $1,300,000 for pay reform initiatives involves fundamental, far-reaching, and technically complex changes in the Government's pay system. Without the requested funding, we will be unable to recruit specialized staff to implement pay reform, thus hindering the development of regulatory policy and guidance. In addition, surveys to determine which job categories and benchmarks will be used to separate occupations into national and local market-based pay scales would be delayed. The research and development of new pay and classification systems necessary to support separate systems for health care and law enforcement occupations would suffer. These studies are critical to successful pay reform implementation.

Without the requested additional funding of $389,000 for investigations, OPM will continue to have a backlog of National Agency Check and National Agency Check with Inquiries (NAC/NACI) cases. This backlog lengthens the time it takes agencies to bring certain employees on board by as much as three months. In addition, OPM's inability to provide timely investigative services creates problems for agencies when suitability issues are raised after an employee has been in a position beyond the one-year probationary period.

OPM's accounting system does not meet applicable standards for financial management systems, including the U.S. Government Standard General Ledger, OMB Circular A-127, JFMIP Core Financial Requirements, and Title II of the GAO Manual. In addition, OPM is experiencing accounting processing inefficiencies due to the manual nature of current procedures. Without the requested increase of $259,000 to fund a new core accounting system, these problems will continue. We will continue to report the Administrative Accounting System and Personal Property System as "Material Weaknesses."

The front-line service initiative is to educate and train Federal employees and managers in techniques and practices to improve the quality and responsiveness of contacts with the public. OPM has made a substantial effort to survey Federal agencies to determine what has been done, what is being contemplated, and what are the best strategies for improving front-line service. With the $1,000,000 requested, we will be able to provide the leadership, coordination, and training that is needed for major advances in this area.

RETIREMENT FUNDING

Mr. ROYBAL. With regard to the payment to the Civil Service Retirement and Disability Fund, please explain briefly the purpose of this appropriation and how the appropriation request is computed.

Ms. NEWMAN. The Civil Service Retirement law currently provides for an annual appropriation to amortize, over a 30-year period, all increases in CSRS costs resulting from the passage of legislation granting new or liberalized benefits, extensions of coverage, or pay raises.

The total appropriation for FY 1991 represents the sum of all the annual 30-year payments authorized through FY 1990, plus the first of 30 annual installments for the FY 1991 pay raise.

The appropriation also includes funding for the annuities of persons employed on the construction of the Panama Canal and the widows of former Lighthouse Service employees.

Mr. ROYBAL. How will the new Federal Employees' Retirement System impact on this payment made to the Fund?

Ms. NEWMAN. In the long term, as the proportion of FERS-covered employees increases in the years ahead, the amortization payments will gradually decrease in value until they are no longer required.

Mr. ROYBAL. What is the current unfunded liability of the Fund and how will the new Retirement System impact on that unfunded liability?

Ms. NEWMAN. As of September 30, 1988, the statutory unfunded liability, calculated using static economic assumptions, stood at $176 billion.

FERS employee and employer contributions are designed to finance the full normal cost of FERS retirement benefits. There is thus no unfunded liability, or accompanying 30-year payments associated with granting pay raises to FERS employees. The payments already scheduled and those that will be due in the future pertain solely to CSRS employees.

Please note, however, that under 5 U.S.C. 8423(b), payments will still be required to cover the supplemental liability created by legislation granting new or liberalized FERS benefits.

Mr. ROYBAL. What impact will the new FERS program have on the long-term funding of the former system--the Civil Service Retirement System?

Ms. NEWMAN. Even though the Federal Employee's Retirement System Act of 1986 established a new basic benefit plan, the law provides that all contributions continue to be deposited to the Civil Service Retirement and Disability Fund and that the Fund is available for payment of all benefits for both the CSRS and FERS. The Fund will continue to grow in the foreseeable future, and current financing arrangements are sufficient to ensure that there will always be sufficient funds available to pay both CSRS and FERS benefits.

Mr. ROYBAL. The President's budget indicates that legislation will be proposed that would impact on this account. What is the status of that legislation and what would it do?

Ms. NEWMAN. The Administration's retirement reform proposals are being coordinated within the executive branch. The proposals would implement the initiatives outlined in the President's FY 1991 budget, including eliminating the FY 1991 cost-of-living adjustment for retirement benefits, computing future CSRS cost-of-living adjustments using the CPI minus one formula now used under FERS, eliminating the option for an employee to withdraw his or her contributions in a lump sum at the time of retirement, and increasing contributions to the Fund from the United States Postal Service and D.C. government to fund more fully the benefits paid to their CSRS-covered annuitants.

RETIREES' LIFE INSURANCE

Mr. ROYBAL. Please explain the way the current life insurance system for Federal retirees works now as contrasted with the way it previously operated.

Ms. NEWMAN. Annuitants have the option of electing three levels of post-retirement basic life insurance benefits upon retirement: 75 percent reduction, 50 percent reduction, and no reduction. The percentage represents the amount by which the insurance coverage is ultimately reduced after age 65. Prior to January 1, 1990, coverage for the 75 percent reduction option was provided at no cost to the annuitant while the 50 percent and no reduction options required premiums paid entirely by the annuitant. However, annuitants retiring on or after January 1, 1990, are required to make contributions to age 65 at the same rate as active employees in order to continue their basic life insurance coverage. These amounts are in addition to premiums currently paid by annuitants electing the 50 percent and no reduction options.

Mr. ROYBAL. Who pays the life insurance costs of current retirees?

Ms. NEWMAN. In principle, the life insurance costs associated with the post-retirement coverage that was provided at no additional cost to persons retiring before January 1, 1990, were being funded by the accumulated premiums paid while those retirees were active Federal employees. Higher premium rates were charged under the pre-1980 life insurance program to finance the cost of the post-retirement life insurance benefit. The relatively expensive premium rate associated with this funding arrangement under the old program was identified as one of the principal elements contributing to the low participation rate among the younger members of the work force. To help remedy this situation, the contribution period was extended to include post-retirement years for those people retiring after January 1, 1990, which enabled a lower premium level to be established for all enrollees covered by the basic program.

Mr. ROYBAL. Specifically, what costs will the funds requested cover?

Ms. NEWMAN. Under the same cost-sharing formula that applies to active employees, the Government will pay one-third of the premiums for annuitants electing to continue coverage into retirement until age 65, while the annuitants will pay the other two-thirds. Similar to the role played by OPM in the health benefits area, OPM will act as the annuitant's "employing agency" in requesting and contributing the amount required by this new funding provision. Funds appropriated by Congress will be used for the sole purpose of providing the contributions necessary to make payment to the Life Insurance Fund on behalf of annuitants.

Mr. ROYBAL. Please explain the proposed increase you are requesting.

Ms. NEWMAN. The increase that we are requesting for the Government Payment for Annuitants, Employee Life Insurance, is the result of an increasing number of annuitants retiring after January 1, 1990. The Government pays one-third of the premiums for annuitants retiring after January 1, 1990, who elect to continue basic life insurance coverage into retirement. As this population increases, the Government's cost will increase.

ANNUITANTS' HEALTH BENEFITS

Mr. ROYBAL. Please explain briefly what this appropriation is for and how it is computed.

Ms. NEWMAN. When Federal employees retire they no longer have an employing agency to contribute the employer's portion of health benefit premiums. OPM acts as the "employer," on the annuitants behalf, and requests appropriations to finance the Government's portion of the health benefits premium. The amount of the appropriation request is based on the program-wide average premium evidenced for the retired population and anticipated increases in premiums and covered populations expected in future years.

Mr. ROYBAL. Will the appropriation requested guarantee that no benefits will be reduced in 1991 as a result of this appropriation?

Ms. NEWMAN. Yes. We expect that the amount requested will be adequate to maintain current benefit levels.

Mr. ROYBAL. What happens when the amount you request is different from the actual requirements?

Ms. NEWMAN. The funds authorized under Government Payment for Annuitants, Employee Health Benefits, are appropriated for the sole purpose of paying the Government's share of retirees' health benefits premiums and remain available within the account until expended. If the actual obligations during the year are less than expected, the funds are retained within the account as a unobligated balance and will be used to reduce subsequent appropriation requests. If the funds available within the account are inadequate to finance the fiscal year requirements, we would seek additional authority through a supplemental appropriation. As a matter of practice, we attempt to maintain a moderate "reserve" within the unobligated balance to provide for unforeseen events such as a surge in retirements or higher premium levels that might require additional funding, in order to avoid the necessity for a supplemental funding request or benefit reductions.

Mr. ROYBAL. How many people are involved in administering this program? Are they paid from this appropriation?

Ms. NEWMAN. There are approximately 141 people directly involved in the administration of the FEHB Program which covers over 4 million active and retired enrollees, and their dependents. The costs of administering the FEHB Program are approximately $7.4 million a year and are authorized by Congress as part of the "Transfer from Trust Funds" amount presented within OPM's Salaries and Expenses account.

Mr. ROYBAL. The budget indicated that some legislation will be proposed that would impact on this account. What is the status of that proposed legislation and what would it do?

Ms. NEWMAN. There are two items included in the Administration's budget proposals that affect the Government Payment Account. The first proposal would change the method for calculating the Government contribution under the program from the current "Big Six" formula to a weighted average formula. The weighted average formula would recognize the actual enrollment trends of the covered population and is designed to ensure an equitable distribution of cost between the Government and enrollees. The change in the formula would apply to all enrollees participating in the FEHB Program, including annuitants. We are also proposing, as an alternative to the weighted average approach, a series of administrative and legislative actions that would help to achieve the same budgetary targets. Among these actions are the immediate preemption of State income taxes and the unifying of contingency reserves. An outline of these proposals was transmitted to the Speaker of the House on February 28, 1990. I would be happy to provide a copy of the letter for the record (copy attached). The second budget proposal would have the Postal Service and the D.C. government pay the Government's share of health benefit premiums for all of their retired employees and their survivors. The Postal Service now pays only for those annuitants and survivors eligible after October 1, 1986. Historically, the Government Payment Account has included an amount to finance the Government's portion of premiums for all annuitants, thereby creating an unwarranted subsidy for the Postal Service and the D.C. government.

Mr. ROYBAL. Is the $217 million reduction based on the anticipated passage of the legislation you mentioned?

Ms. NEWMAN. No. The reduction in the Government Payment for Annuitants, Employee Health Benefits account reflects the use of unobligated funds already available in the account. The appropriation is a multi-year appropriation. Any unused balance from a given year may be used in subsequent years. Given projected enrollment growth and premium rates negotiated for the 1990 contract, we project that the unobligated balance will grow to $780 million by the close of FY 1990. Approximately $400 million of the unobligated balance carried forward will be used to fund benefits in FY 1991.

Mr. ROYBAL. Thank you, Ms. Newman.

The Chair will now recognize Mr. Skeen.

Mr. SKEEN. Thank you, Mr. Chairman.

DRUG TESTING

Last year I asked about your program of drug testing. Has this program begun? How is it going?

Ms. NEWMAN. After completing its employee notice and bargaining obligations, OPM began its testing program on September 30, 1988. Before being enjoined from proceeding with further random or post-accident drug tests, OPM had tested 20 employees under the random testing program and one employee under the reasonable suspicion testing program. None of the 20 employees tested under the random testing program have received confirmed positive test results. The reasonable suspicion test yielded a confirmed positive result.

On June 15, 1989, OPM was enjoined from continuing its random and unsafe practice/accident testing program by the U.S. District Court for the Northern District of California. On advice of Justice Department counsel, we decided not to seek an appeal of the injunction on random testing. Therefore, the injunction of the random testing program became final. We continued to litigate whether unsafe practice/accident testing should be enjoined. On March 15, 1990, the same court permanently enjoined OPM from conducting unsafe practice/accident testing, but allowed OPM to continue testing when based on a reasonable suspicion of illegal drug use. We are consulting with the Justice Department on whether to appeal the injunction on unsafe practice/accident testing to the U.S. Court of Appeals for the Ninth Circuit.

FEDERAL PAY

Mr. SKEEN. I am very concerned with the pay scales for Federal employees. The Advisory Committee on Federal Pay testified before this Committee a couple of weeks ago and indicated that the pay gap had widened from a 26 percent disparity to 28 percent. Obviously, we are not closing that gap. Would you please tell us what efforts are being made to recruit and retain qualified employees?

Ms. NEWMAN. In the area of pay, one effort to assist agencies in recruiting and retaining employees is increased use of the special rates authority. Currently, there are over 350 separate special rates authorizations in effect, covering approximately 176,000 employees, about 12.7 percent of the total General Schedule population.

OPM has also worked with agencies to establish demonstration projects, several of which have provisions for increasing pay to deal with particular staffing problems. Among these demonstration projects are one covering all employees of the FBI's New York field office, under which special recruitment and retention allowances are paid; and one in FAA, under which retention incentives may be paid to encourage service in certain hard-to-staff facilities around the country.

While special rates and demonstration projects help somewhat, a real solution to the Government's staffing problems must be sought in a more comprehensive reform of the Federal pay system. The Administration's legislative proposal will be submitted shortly. Recognizing that fundamental reform of the pay system will take several years to implement fully, the President's FY 1991 Budget proposes early implementation of certain reform features to deal with the most pressing problems. These measures include geographic differentials of up to 8 percent for all personnel in the New York, Los Angeles, and San Francisco metropolitan areas; 5 percent increases in starting salaries nationwide at the GS-5 and GS-7 levels for college graduate-type occupations; the extension of the current authority to hire at pay levels above the minimum step to all grades; and bonuses to recruit, retain, or relocate critical skill workers.

In addition, in the area of recruiting and examining, OPM has begun a number of new initiatives. First, we have established a new automated applicant referral system (AARS) for hard-to-fill jobs which combines quick, simple application procedures with computerized scanning of applications and generation and transmission of referral lists to agencies. Applicants are entered in the system within 24 hours of application, and agencies get referral lists by facsimile in about 30 minutes.

We also continue to coordinate and sponsor job fairs. OPM recently sponsored job fairs in connection with the Celebration of Public Service observances in Atlanta, Boston, Denver, San Francisco, and Washington. Agencies who attended the fairs were given the authority to make immediate offers of appointment to well-qualified candidates in a variety of hard-to-fill occupations.

We are also implementing a new entry-level examination for the Government's professional and administrative career jobs. On May 1, OPM will begin accepting applications for the new examinations covering positions formerly filled under PACE and the subsequent Schedule B hiring process which resulted from the Luevano Decree. Called Administrative Careers with America (ACWA), the new examinations include use of a written test and a biodata questionnaire. ACWA covers six groups of occupations for which there are written tests and a seventh group of occupations with positive education requirements.

The new written examinations include job-specific questions and a new feature called the Individual Achievement Record (IAR) which evaluates how well individuals have used the opportunities they have had in school, work, and outside activities. The combination of the written test and IAR will provide enhanced prediction of applicants' potential to do well in these occupations. We believe ACWA will help us attract bright young college graduates and identify the best among them.

OPM is also improving the way that information on Federal job opportunities reaches the public. To publicize hard-to-fill positions, we are distributing the nationwide portion of the Federal Job Opportunities List (FJOL) to all State Job Service offices in the country via the Interstate

Job Bank system. For local vacancies, we are undertaking pilot projects to transmit job vacancy listings to State Job Service offices through automated systems. This is being done in cooperation with the U.S. Employment Service and the New York State Department of Labor. Another pilot with the Interstate Job Bank will cover Maryland, Virginia, and the District of Columbia.

In addition, the College Hotline, which is part of our Job Information 2000 project, is now operational. By dialing a 900 number, applicants can select among various kinds of pre-recorded job information and can also request application forms, which are mailed within one day. The typical call lasts about 5 minutes and costs the caller about $2.00.

OPM is continuing to install touch screens in Federal Job Information Centers across the country; 24 systems are already installed. Applicants can receive information about categories of jobs and Federal employment topics by touching labeled boxes on the computer screen. The touch screen system will then automatically display the information requested.

Furthermore, we recently completed a nationwide survey of Federal Job Information Center clientele to ascertain their expectations and how well they were met. In general, responses were more favorable in cases where personal service was available. The findings of this report will be used to determine how to improve this front-line job information delivery system.

OPM is also conducting a program of studies of workforce quality, including studies of applicant and new-hire quality. Comparisons with available data from the private sector will be made in order to determine if the Government's pool of applicants and hires is of comparable quality. Once this information is available, we will be able to make changes that will make the Government a more desirable place to work, both as an initial employer and as a setting in which to spend a career.

We are particularly proud that OPM has revitalized its college relations program, including special initiatives with Historically Black Colleges and Universities and the Hispanic Association of Colleges and Universities. We have developed brand new recruiting materials aimed at this source of candidates entitled, "Career America--Find Out Why the Government is Becoming the First Choice." We have also surveyed college placement offices to assess recruitment efforts.

It is important to note, as well, that we have revised our staffing systems to give agencies more leverage in tight labor markets. We now authorize agencies to hire qualified individuals directly where critical shortages exist. Our latest data show that 30 percent of new hires were direct hire. Where direct hire authority cannot be justified, we offer agencies the option to examine candidates instead of having OPM do it. This option allows agencies to control recruitment, paper processing, and time needed to bring applicants on board. Our latest data show that 38 percent of new hires were under delegated examining. We also gave agencies greater flexibility in hiring individuals at higher pay rates and approving relocation costs. The law allows higher pay for applicants with superior qualifications at the higher grade levels and reimbursement of transportation costs in shortage markets. Agencies now can make these decisions for themselves. To help in staffing nonpermanent positions, we've given agencies greater flexibility in making temporary appointments. To help in recruitment efforts, we have allowed agencies, for the first time, to use private sector commercial search firms.

In addition, we have given agencies more discretion in setting qualification standards. An agency's ability to specify job requirements and apply them quickly can affect recruiting success. We have completed a major simplification of the qualifications standards system for white-collar jobs. Instead of individual standards for all jobs, we now use generic standards that cover broad groups. We replaced about 2000 pages under the old system with about 300 pages under the new system. Under this new system, agencies can specify the knowledge, skills, and abilities that their jobs require. This helps ensure that the people they recruit have the needed qualifications. We have also authorized agencies to set appropriate medical standards and physical requirements for their positions.

LOCALITY PAY

Mr. SKEEN. The Administration has indicated a willingness to extend locality pay to several areas of the United States. Legislative proposals would extend this pay to cover a number of other high cost urban areas. Would you inform this Committee how you arrive at an equitable solution to locality pay differentials?

Ms. NEWMAN. Staffing problems and differences between Federal and non-Federal pay vary widely from one locality to another. Given these differences and significant budget deficits, the best approach is to provide immediate relief to those locations most in need and deal with any other areas experiencing staffing problems on a priority basis as the need arises. The immediate relief provisions of the President's FY 1991 Budget are an effort to deal with the most troublesome locations first. The Los Angeles, New York, and San Francisco CMSA's were selected because these locations have many Federal employees, extreme difficulty in recruiting employees for most occupations, high turnover, and non-

Federal pay rates significantly higher than the national average.

The immediate relief differentials would, for employees under local schedules, be supplanted over time by locality pay based on local salary surveys conducted by the Bureau of Labor Statistics (BLS). For employees under the National Schedule, geographic differentials would be used in areas where the Government would experience serious recruitment or retention difficulties without the differentials.

Mr. ROYBAL. Mr. Akaka?

Mr. AKAKA. Thank you, Mr. Chairman.

COST-OF-LIVING ALLOWANCE (COLA) PROGRAM

I have questions concerning the Office of Personnel Management's implementation of new cost-of-living allowance regulations for non-foreign areas outside the United States. What is the status of the COLA program?

Ms. NEWMAN. OPM published final regulations on the COLA program in January 1990. The purpose of these regulations is to put the COLA program on a sound legal and procedural footing. They describe in broad outline the method OPM will use in comparing the cost of living in the allowance areas with the cost of living in the Washington, D.C., base area, as required by law. The regulations also provide that OPM will publish proposed COLA rate changes, including information on how the proposed new rates are calculated, in the Federal Register to give interested persons an opportunity to comment before new rates are finally implemented.

The method outlined in broad terms in the final regulations adopts the approach the Government agreed to in its settlement of the Arana suit, under which price comparisons will be made of substantially identical brands and models of consumer goods, rather than comparing prices for the largest selling brands or models in the allowance areas with the largest selling brands or models in Washington--often very different products. We are now in the final stages of a competitive procurement process to obtain the services of a private sector contractor to design a detailed cost-of-living model that will conform to this broad approach.

Until new rates are finally issued in accordance with the public notice and comment provisions of the Administrative Procedure Act, we will continue to pay the rates that have been in place since December 1984 in Anchorage and since January 1986 in all other allowance areas. These rates have been agreed to by the Government and the plaintiffs in the Alaniz and Karamatsu lawsuits.

Mr. AKAKA. Has OPM hired a contractor to gather price information?

Ms. NEWMAN. We have not yet completed the competitive procurement process to obtain the services of a contractor.

Mr. AKAKA. When do you expect to announce the new rates?

Ms. NEWMAN. We expect to announce proposed new rates later this summer; there will be a comment period of 60 days.

Mr. AKAKA. Has a detailed methodology been developed under the guidelines set in the final rules? Please provide a copy for the record.

Ms. NEWMAN. We have not yet developed a detailed methodology under the guidelines set in the final rules. Development of a detailed methodology will be the first task undertaken by the contractor whose services we are now obtaining through the competitive procurement process.

Mr. AKAKA. Why has OPM declined to allow comment on the detailed rule before completion of data collection and rate setting?

Ms. NEWMAN. We have already provided significant opportunity for comment on our broad methodology. We believe most commenters would prefer to comment on the detailed methodology when they see results of its application so they can assess the methodology's impact more directly and specifically. There will be a full opportunity to comment on the detailed methodology and proposed rates before they are approved.

Mr. AKAKA. What is the deadline for rate setting? Will OPM meet that deadline?

Ms. NEWMAN. OPM's deadline for establishing new COLA rates is October 1990. We expect to meet that deadline.

Mr. AKAKA. Why does OPM only consider price, instead of the "relative cost of living," in calculating the cost-of-living differential?

Ms. NEWMAN. The purpose of OPM's methodology is to compare the cost of living in each of the allowance areas with the cost of living in the Washington, D.C., area. The most common way of measuring relative differences in the cost of living between two different locations is to compare prices for representative items (goods and services, housing, etc.) in the two areas, and then weight the resulting ratios by the appropriate weight for each category of expenditures (e.g., food, clothing, non-prescription medications).

Mr. AKAKA. Why are non-price factors excluded?

Ms. NEWMAN. During the comment period on our proposed regulations, we received a number of recommendations that an additional 5 percent be added to each allowance rate to compensate for differential needs and additional "non-economic" costs, such as a limited selection of consumer items, separation from family and native culture, and a perceived inferior overall quality of living. We do not believe that the underlying statute (5 U.S.C. 5941) guarantees equal standards of living in the allowance area. OPM does not believe that adding 5 percent to the calculated allowance rates based on unsupported conjecture would be consistent with the requirement in Executive Order 10,000 (which delegates responsibility for the COLA program from the President to OPM) that allowance rates "shall not in any instance exceed the amount justified."

Mr. AKAKA. Will the new methodology take into account costs incurred in the COLA areas but not in Washington, D.C.? If not, why not?

Ms. NEWMAN. Generally speaking, the new methodology will not attempt to take into account the cost of goods and services that are needed in one allowance area but not normally needed in another. We do not believe it is necessary to isolate and compare every location-specific difference in items purchased in order to fairly and accurately calculate differences in the cost of living. We note, however, that in some cases, differences in needs are inseparable from the basic measurement of the cost of an item, and will therefore affect the calculation of allowance rates under the new methodology. For example, in an allowance area where automobiles are routinely equipped with engine block heaters, the additional cost of purchasing such heaters will be reflected in the survey of transportation costs.

Mr. AKAKA. By definition, all COLA areas are remote from the continental United States. Will the new methodology account for the higher transportation costs incurred by employees in COLA areas travelling to the mainland?

Ms. NEWMAN. We have not yet completed development of the details of how transportation costs will be evaluated under the new methodology. In general, the new methodology will not attempt to take into account the cost of a service, such as travel to the mainland United States, that may be more frequently needed in the allowances areas than in the Washington, D.C., base area. As I said earlier, we do not believe it is necessary to isolate and compare every location-specific difference in goods and services purchased in order to fairly and accurately calculate differences in the cost of living.

Mr. AKAKA. In addition, many COLA areas do not have a full range of medical services, which requires employees to travel elsewhere to procure these services. How will the new methodology take this into account?

Ms. NEWMAN. We have not yet completed development of the details of how the cost of medical services will be evaluated under the new methodology. Here again, we do not believe it is necessary to isolate and compare every location-specific difference in goods and services purchased in order to fairly and accurately calculate differences in the cost of living.

Mr. AKAKA. Many COLA area employees must shop in small groceries and merchandise retail stores, which are more expensive and limited in selection than large supermarkets and department stores. How will the methodology account for these differences in shopping and availability of goods and services?

Ms. NEWMAN. While the detailed methodology for selecting items and outlets to be surveyed has not been completed, we expect that the majority of items will be collected from those outlets where the items are most generally available, whether these are department stores or smaller retail establishments.

Mr. AKAKA. It has been suggested that OPM add five COLA points to the price differential between Washington and the COLA areas to address non-price factors. What is the agency's view of this proposal?

Ms. NEWMAN. As I noted earlier, during the comment period on our proposed regulations we received a number of recommendations that an additional 5 percent be added to each allowance rate to compensate for differential needs and additional "non-economic" costs, such as a limited selection of consumer items, separation from family and native culture, and a perceived inferior overall quality of living. We do not believe that the underlying statute (5 U.S.C. 5941) guarantees equal standards of living in the allowance areas and the Washington, D.C., area. Rather, it authorizes payment of an allowance to compensate employees for the higher cost of living in the allowance area. OPM does not believe that adding 5 percent to the calculated allowance rates based on unsupported conjecture would be consistent with the requirement in Executive Order 10,000 (which delegates responsibility for the COLA program from the President to OPM) that allowance rates "shall not in any instance exceed the amount justified."

Mr. AKAKA. Major installment purchases often lock in employees' costs over a period of years. An employee's cost of living may not parallel prevailing price levels due to finance methods on major purchases such as homes and vehicles. Do you agree that OPM should gradually implement any reductions in the COLA?

Ms. NEWMAN. Under Executive Order 10,000, OPM is allowed to make decreases in allowance rates gradually if they are the result of changes in the methodology. Clearly, the change from comparing prices for the largest selling brands or models to comparing prices for specific brands or models is a significant change in methodology.

Mr. AKAKA. When did OPM last set COLA rates? Has it collected price data since that time? What did that data reveal? How would it have affected rates?

Ms. NEWMAN. OPM last adjusted COLA rates based on survey data in January 1984. Additional adjustments were made in December 1984 in Anchorage and in January 1986 in all other allowance areas pursuant to settlement agreements in the Alaniz and Karamatsu lawsuits.

OPM continued to collect data until 1989. Because of litigation in the Alaniz and Karamatsu class action lawsuits, we have not completed analysis of any of this data, and cannot, therefore, say what effect this data would have had on rates.

Mr. AKAKA. Will the Administration's locality pay proposal modify the COLA program? If so, in what way?

Ms. NEWMAN. The Administration's pay reform proposal will not modify the COLA program. Employees whose pay will be set on a national basis will continue to receive COLA in the same way they do now. Employees whose pay will be set on a locality basis will also continue to receive COLA, but the value of the COLA, including the fact that it is not subject to Federal income tax, will be taken into account in establishing the locality schedules. In no instance will new schedules be established that are below the combination of existing GS rates plus COLA.

Mr. ROYBAL. Mr. Lowery?

Mr. LOWERY. Thank you, Mr. Chairman.

RETIREMENT PROCESSING DELAYS

I am concerned about the time period required for processing claims for Federal retirement benefits. I understand that OPM must rely on other Federal agencies to provide employment records in a prompt manner. However, I am also concerned about reports I have received regarding OPM's processing of retirement claims and the overall handling of Congressional inquiries. What is the current performance of Federal agencies in submitting retirement records to OPM?

Ms. NEWMAN. I will be happy to submit for the record a chart showing the most recent information available on the performance of the "Big 13" agencies, representing 91.5 percent of the Federal workforce, from December 1988 to December 1989 (copy attached). As you will see from our chart, there has been marked improvement in some agencies' performance and only a marginal gain in others.

Mr. LOWERY. What is OPM's procedure and turnaround time for processing Federal retirement claims?

Ms. NEWMAN. As I mentioned earlier, in order to alleviate financial hardship during the time required for adjudication of retirement claims, OPM authorizes recurring interim payments to all annuitants who are clearly entitled to retirement benefits. These recurring interim payments are generally about 85 percent of the full monthly benefit, and up to 95 percent if the annuitant elects the alternative annuity option. Recurring interim payments are authorized within 12 to 14 calendar days after OPM receives the retirement package from the employee's agency. Approximately 95 percent of the retirement packages received from agencies provide sufficient documentation to verify entitlement to retirement benefits. Check processing by the Treasury Department and delivery by the Postal Service require 8 to 10 days, so that the overall processing timeframe is typically a total of 20 to 24 days between the date that OPM receives the retirement records from the agency and the date that the retiree receives the first interim annuity payment.

Once recurring interim payments have been authorized, we must take additional steps to adjudicate the claim. Retirees have up to 30 days, from the date that they receive the letter from OPM detailing their annuity options, to decide whether or not they wish to elect the alternative annuity. Even though this has permanently lengthened OPM's processing time for the vast majority of retirement cases, we currently complete our processing and final adjudication of fully developed claims within 50 to 55 days after we receive the retirement package from the employee's agency. The time period for each claim varies according to how long the retiree needs to make the alternative annuity election.

Although approximately 95 percent of all retirement packages contain sufficient information to begin interim payments, almost one third of retirement claims are not complete and accurate when OPM receives the retirement records. That is to say, the application and supporting documentation prepared by the employing agency are incomplete or incorrect. In these instances, the overall processing time must be extended in order to obtain the missing information or documents from the agency personnel or payroll offices, or from the retirees themselves.

Mr. LOWERY. I ask that you look into the handling of a particular case involving the retirement benefit claim of Catherine Strohlein of San Diego. I understand that Mrs. Strohlein submitted Forms 1538 and 1431 in July, 1989. In August, OPM informed her that it had not received the documents. Mr. and Mrs. Strohlein again submitted the documents. Over the next several months, the Strohleins received two more notices to file the same documents. My office became involved in the case and Mrs. Strohlein eventually received her check in February of this year. Does OPM have a system for tracking and tracing documents submitted for benefits?

Ms. NEWMAN. Even in a system as large and complex as ours, where mishaps are always possible, we certainly do make, and will continue to make, a concerted effort to avoid them. OPM does, of course, have various systems for tracking and controlling benefit applications and related documents. For the retirement and death benefit applications, it is a long-established automated tracking system. For refund applicants, we are just instituting an automated tracking system to replace our current manual system. Both systems capture identifying data from the date of receipt of the applications through payment date. Intermediate requests for additional information needed from the employing agency or the applicant are also recorded via these systems, with automatic follow-up listings generated as they become due. Service credit applications, as well as applications for voluntary contributions, are currently tracked through a manual system. We will continue to try to improve these systems, and we hope that what happened to your constituents will not recur.

Mr. LOWERY. How are Congressional inquiries processed? Have you reviewed your Congressional relations procedures?

Ms. NEWMAN. OPM gives the highest possible priority to Congressional inquiries. Our Office of Congressional Relations (OCR) picks up mail twice a day, in order to ensure expeditious processing of all such inquiries. OCR also works closely with other OPM offices to be certain that issues are resolved in a timely manner and appropriate responses are sent. At the same time, as an agency, we constantly review our on-going administrative procedures with a view to improvement.

Each Congressional inquiry is designated as "Priority Correspondence," which requires a response within 13 calendar days. All correspondence of this type is entered and monitored on a computerized tracking system that reports daily on the status. OPM management reviews these reports, and ensures that prompt and complete response to Congressional inquiries is a matter of continuing concern to all supervisors.

OPM's Retirement Information Office has also dedicated additional resources to a special "hotline" which we provide to answer inquiries from Congressional staff offices, specifically on retirement-related issues. The hotline approach provides immediate response to these priority inquiries, lessens the need for Members of Congress to write to OPM on behalf of their constituents, and significantly improves the overall quality of service we provide to annuitants. We provide the telephone number for the "hotline" to all Congressional offices.

LOCALITY PAY ADJUSTMENTS

Mr. LOWERY. What is OPM's position on locality pay adjustments for Federal Employees?

Ms. NEWMAN. OPM endorses the concept of varying pay by locality. However, we believe the nature and degree of the linkage should differ by occupational group. Jobs for which recruitment is generally conducted from a local labor market, such as clerical, technical, and some administrative jobs, should be paid on a locality basis. Jobs for which recruitment is normally conducted from a national labor market, such as most professional and administrative jobs, should be paid on a national basis, with flexibilities such as geographic differentials for exceptionally high cost areas and staffing differentials and recruitment bonuses for occupations or locations with severe staffing problems.

Mr. LOWERY. Do you support locality pay adjustments for Federal law enforcement officers?

Ms. NEWMAN. OPM recognizes the pay-related problems currently faced by the Federal law enforcement community and agrees with the concept of geographic variations in pay. We do not, however, support legislation that would deal solely with law enforcement personnel without regard to problems affecting the workforce generally. We believe a solution can be reached that will serve the law enforcement community as well as the greater Federal community.

Mr. LOWERY. What factors should be included in determining locality pay for high cost-of-living areas?

Ms. NEWMAN. Locality pay is needed because non-Federal pay rates vary from place to place across the country, affecting the Government's ability to attract and retain a competent workforce. The situation is often more acute in locations with an above average cost of living. However, living costs are not the only factor affecting local pay. Other factors such as the dominant industry, degree of unionization, level of economic activity, and size and skill level of the local workforce also affect local pay rates. Because all of the factors affecting pay are reflected in local market rates, we believe rates of pay that are paid by other employers are the key factor to consider.

The Wyatt Company, in its report to OPM, recommended that cost of living not be used for pay setting, but perhaps be used as a factor in determining payments made for agency-initiated transfers. We recognize that problems exist when employees are transferred from a low-cost to a high-cost location. The Administration's proposal as reflected in the President's Budget does provide relocation bonuses for employees transferred to high pay or high cost-of-living locations.

Mr. LOWERY. Would San Diego, California, qualify for locality pay?

Ms. NEWMAN. Under a locality-based pay schedule, which we are proposing for jobs generally recruited locally, employees in any area would be paid based on prevailing labor costs, regardless of whether they are high or low. OPM has not determined how areas would be defined if a locality pay system were established.

Under a national pay schedule, which we are proposing for jobs generally recruited nationally, exceptionally high labor cost areas experiencing significant staffing problems would qualify for geographic differentials. Until appropriate valid data are collected consistent with whatever criteria are enacted into law, we cannot speculate on whether San Diego would qualify.

Mr. LOWERY. Do you have statistics on retention rates for Federal law enforcement personnel in San Diego?

Ms. NEWMAN. I would be happy to provide that information for the record (copy attached).

FOREIGN LANGUAGE BONUSES

Mr. LOWERY. Do any Federal agencies provide incentives for employees with second language capability? What is OPM's view of second language bonuses or pay increases for INS and Customs inspectors and U.S. Border Patrol agents?

Ms. NEWMAN. The Anti-Drug Abuse Act of 1988 authorized foreign language bonuses of up to 25 percent of basic pay for the Federal Bureau of Investigation and the Drug Enforcement Agency. The State Department also has authority to pay foreign language bonuses.

OPM has no objection to the concept of paying bonuses under appropriate circumstances to employees who are required to make use of foreign languages or other specialized, shortage skills in their work. These bonuses should be tied to staffing needs, not made an automatic entitlement, and they should be available for any specialized skills agencies find in short supply. Nor should they be limited to the INS, Customs inspectors, U.S. Border Patrol agents, or just the law enforcement community.

As the President indicated in his FY 1991 Budget message, the Administration's legislative proposal on Federal pay will seek authority for all agencies to pay bonuses to recruit, retain, or relocate critical skill workers. We believe these authorities will be adequate to compensate employees with critical, shortage language skills.

RETIREMENT COST-OF-LIVING ADJUSTMENTS (COLA'S)

Mr. LOWERY. Why does the Administration oppose COLA's for Federal retirees? Please provide a rationale for this proposed policy for the record.

Ms. NEWMAN. The focus of the Administration's COLA reform proposal is to bring CSRS COLA's into closer parity with FERS and the private sector, and reduce the growing CSRS unfunded liability, which ultimately must be borne by the American taxpayer.

CSRS annuitants have gained substantial benefit in the past from unique and extremely generous COLA provisions including the "look back" and the 1 percent "kicker." Further, CSRS COLA's have outstripped those awarded to Social Security beneficiaries by approximately 22 percentage points over the last 15 years. Our COLA reform proposals must be viewed in the context of the comparatively generous treatment CSRS annuitants have been provided in the past.

A study by Towers, Perrin, Forster and Crosby estimated that 42 percent of non-Federal workers were in retirement plans that granted no COLA's between 1974 and 1983, with the remaining plans providing COLA's averaging only one-third of the increase in the cost-of-living over the period. Thus, even with the reduction we are seeking, the inflation protection provided under our proposals would still be more generous than that typically found in the private sector.

Mr. ROYBAL. Mr. Hoyer?

Mr. HOYER. Thank you, Mr. Chairman.

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP)

Are the funds OPM has requested to pay for the Federal Employees Health Benefits Program sufficient to fully fund all benefits under current formulas?

Ms. NEWMAN. Yes. As I noted earlier, all benefits under current formulas should be fully funded by the amount requested.

Mr. HOYER. Without getting into a debate about the amount of projected savings from your proposals to reform the health insurance program, I have one question for clarification that can be answered with a simple "yes" or "no." Am I correct that there are no savings from the proposal to unify or pool the FEHBP's reserves, and that whatever savings OPM projects from this proposal would come from reducing the reserve requirement, not from pooling?

Ms. NEWMAN. No. The proposal to unify or pool the FEHBP's reserves provides for the capability to reduce the overall reserves of the program. It offers both the stability and flexibility necessary to reduce the reserve level of the program.

INSPECTOR GENERAL

Mr. ROYBAL. What accounts do you have jurisdiction over? Is it only over the Office of Personnel Management?

Mr. CONKLIN. Yes. The Inspector General Act Amendments of 1988 give our office the authority to conduct audits and investigations with respect to all programs, activities, and funds of the Office of Personnel Management. This includes all of the Salaries and Expenses, Revolving Fund, and, of course, the Trust Funds. It includes not only the programs and activities supported by these funds, but also the recipients of those funds. For example, we have audit and investigative jurisdiction over the health and life insurance companies which participate in the Federal Employees Health Benefits and Group Life Insurance programs, and can also audit and investigate the health care providers who receive payment from any of the insurance carriers. This same range of jurisdiction is true for all statutory Offices of Inspector General in the executive branch.

Mr. ROYBAL. Does your jurisdiction extend to the administrative functions which are funded by transfers from trust funds?

Mr. CONKLIN. By "administrative functions," I believe you are referring to those activities funded by OPM trust funds which are conducted directly by OPM employees rather than through contractors or other agencies, including retirement claims adjudication, the negotiation and administration of health and life insurance contracts, and the policy and management functions which support them. These operations are collectively responsible for managing the expenditure of $49 billion (FY 1991) in trust fund payments to approximately 2.2 million annuitants and over 400 life and health insurance carriers. We do indeed have jurisdiction in such areas and are presently conducting an active audit program with respect to them. To date, our audit initiatives have identified several aspects of these programs which are susceptible to fraud and the misuse of funds, and our appropriation for FY 1991 seeks an increase of $500,000 to expand our audit oversight of these offices.

Mr. ROYBAL. How much of your resources will be devoted to audit?

Mr. CONKLIN. $1,970,000 from our Salaries and Expenses account will be devoted to direct internal audit activities. On the trust funds side of our operation, $2,349,000 is budgeted for audit functions. This is a total of $4,319,000 direct funding available for audit purposes. Overhead is not included in these figures but is included in our total appropriation request.

Mr. ROYBAL. How much will be used for inspections to review agency operations?

Mr. CONKLIN. In accordance with the current version of GAO's Government Auditing Standards, and the accepted practice in the Federal IG community, we have adopted the "total audit" format for our operations. In brief, this means that part of each audit project we undertake addresses the organizational performance of the unit or program under review. We do not distinguish, in terms of resources, the financial auditing aspects from the performance assessment or inspection.

As an internal practice over the past three years, we have referred to our audits of OPM's regional and area offices as "inspections." We devote approximately one staff year to this function each year. But please don't be misled by the terminology. These studies are still full audits, containing all the financial performance review elements.

Mr. ROYBAL. How much will be for investigations of either improper or illegal activities?

Mr. CONKLIN. We are projecting total expenditures of $845,000 for our investigations program in FY 1991. Virtually all of this amount will be devoted to investigations in the program areas where the occurrence of fraud and the likelihood of successful prosecution and recovery of funds are greatest. In OPM, this entails health and life insurance programs, which are operated by private-sector firms under contracts with the agency. During FY 1991, total payments by OPM to these contractors are estimated to exceed $15 billion, all from the trust funds. Losses in the form of theft, embezzlement, or false claims on the part of health care providers (hospitals, clinics, laboratories, and suppliers) result in higher health insurance premiums for annuitants, current Federal employees, and the Government itself. On the basis of our current level of investigative activity, and the experience of the Offices of Inspector General in other Federal agencies which administer similar forms of insurance programs, such as the Departments of Health and Human Services and Labor, and the Railroad Retirement Board, we are convinced that the adverse financial consequences of fraud are significant, but can be effectively reduced and offset by recoveries generated through investigative operations. Inasmuch as many of the individuals and firms which are defrauding the Federal Employees Health Benefits Program are also the subject of investigations by other Federal agencies, State medical licensing boards, and local law enforcement authorities, we will be working in cooperation and coordination with them to achieve an optimal utilization of our resources.

Mr. ROYBAL. Please explain the reason for the $1.7 million increase over FY 1990.

Mr. CONKLIN. This increase can be divided into four separate parts. The first part will be used to expand our criminal investigations program, which, as I've already said, will target cases involving health care provider fraud. This accounts for $530,000 of our request for increases.

Second, an increase of $500,000 will be used to strengthen our audits of OPM's operation of the retirement and insurance programs. The trust funds will make payments in FY 1991 of nearly $49 billion and hold assets in excess of $250 billion. These funds have never before been subject to independent, professional audit coverage, and are considered by OPM, as well as the Office of the Inspector General, to be vulnerable to fraud, waste, and improper use of funds.

Third, an additional $235,000 will support audits of OPM programs outside the trust funds. Over the past few years, OPM has shifted many of the functions previously performed by its own employees to contractors, which makes them less subject to direct management control, and in our estimation, more susceptible to improper financial manipulation. For example, the training program currently has unbilled work on contracts which totals over $64 million, none of which has been subject to audit by any organization. This is just one of the areas we hope to address with this portion of our increase.

Of the remaining $463,000, we have set aside $210,000 to pay increased costs in rent based upon increases asked for by GSA and for changes we must make in our space holdings. $168,000 reflects changes made in our share of the overall OPM administrative support. The final $85,000 will finance 50 percent of the proposed FY 1991 General Schedule and executive pay raises and 50 percent of the expected inflation of costs not related to salaries.

Attachment # 1

PAY COMPARABILITY RECOMMENDATIONS AND ADJUSTMENTS: 1971-1989
(Average Percentage Increases)

FY	Scheduled Date	CSC/OPM Staff	Pay Council	Pay Agent	Advisory Committee	The President	Final Action	Effective Date	Remaining Gap
71	Jan 1971	N.A.	N.A.	N.A.	N.A.	N.A.	6.0%	1/71	
72	Jan 1972	N.A.	N.A.	N.A.	N.A.	Delay to July	5.5	1/72	
73	Oct 1972	5.45%G	5.13%E	5.14%F	5.14%F	5.14%F Delay to Jan	5.14* F	10/72	0.0
74	Oct 1973	4.77 G	5.47 F[1]	4.77 G	5.47 G	4.77 G Delay to Dec	4.77* G	10/73	0.0
75	Oct 1974	5.52 FA	7.3 G later 8.4 G	5.52 FA	7.22 FA	5.52 FA Delay to Jan	5.52* FA	10/74	0.0
76	Oct 1975	8.66 G	8.66 F	8.66 F	8.66 F	5.0 F	5.0** F	10/75	3.5
77	Oct 1976	5.17 G	8.2 F	5.17 G	6.2 G	5.17 G	5.17* G	10/76	0.0
78	Oct 1977	7.05 G	8.8 F	7.05 F	7.05 F	7.05 F	7.05* F	10/77	0.0
79	Oct 1978	8.40 G	8.40 F	8.40 G	8.40 G	5.5 F	5.5** F	10/78	2.7
80	Oct 1979	10.41 G	? F	10.41 G	10.41 G	7.0 F[2]	7.0** F[2]	10/79	3.2
81	Oct 1980	13.46 G	13.49 ?	13.46 G	13.46 G	9.1 F[2]	9.1** F[2]	10/80	4.0
82	Oct 1981	15.10 G	15.10 ?	15.10 G	15.10 G	4.8 F	4.8** F	10/81	9.8
83	Oct 1982	18.47 G	17.05 G	18.47 G	18.50 G	4.0 F	4.0** F	10/82	13.9
84	Oct 1983	21.51 G	21.51 ?	21.51 G	21.51 G	3.5 F Delay to Jan	4.0 F	1/84	16.8
85	Oct 1984	18.28 G	18.28 ?	18.28 G	5.5 F[3]	3.5 F Delay to Jan	3.5** F	1/85	14.3
86	Oct 1985	19.15 G	19.15 ?	19.15 G	4.7 F[3]	Freeze	Freeze**	N.A.	19.2
87	Jan 1987	23.79 G	23.79 G	23.79 G	4.0 G[3]	2.0 F	3.0 F	1/87	20.2
88	Jan 1988	23.74 G	23.74 G	23.74 G	8.0 ?[3]	2.0 F	2.0** F	1/88	21.3
89	Oct 1988	26.28 G	26.28 G	26.28 G		4.1 F Delay to Jan	4.1** F	1/89	21.3
90	Oct 1989	28.62 G	28.62 G	28.62 G	28.62 G	3.6 F Delay to Jan	3.6** F	1/90	24.2

---

* Full Comparability
** President's Alternative Plan
[1] Plus $198 Cost-Of-Living Allowance
[2] Some exceptions at GS-1 and GS-2
[3] Not a comparability recommendation

E Erratic percentage variation by grade
G Gradual percentage variation by grade
F Flat--same percentage at each grade
FA Flat, Almost same percentage at each grade

September 1989

Attachment # 2

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

MAR - 1 1990

Honorable Thomas S. Foley
Speaker of the House of Representat
Washington, DC 20515

Dear Mr. Speaker:

It is my pleasure to submit to you my recommendations for comprehensive reform of the Federal Employees Health Benefits (FEHB) Program as required by Public Law 101-76. After a great deal of research and consultation, the Office of Personnel Management has developed recommendations on the basic design of a comprehensive reform proposal.

The discussion of our recommendations is organized as follows: I. Problems with the Current Program; II. The Need for Reform; III. A Statement of Goals and Reform Recommendations; and IV. Steps to Reform.

I. Problems with the Current Program

Major deficiencies of the FEHB Program were documented in a report prepared for OPM by Towers, Perrin, Forster and Crosby in April, 1988 and in a report prepared by the Congressional Research Service in May 1989. These reports identified a number of structural problems inherent in the current Program, stemming from two basic sources--risk segmentation and economic inefficiencies.

Risk Segmentation

Risk segmentation/risk selection occurs when individuals representing the same level of risk congregate in a given plan or option. The TPF&C Report found that the FEHB Program is a classic example of that phenomenon. Too many elderly and chronically ill participants have gravitated to certain plans or options while younger, healthier subscribers have clustered in less costly and sometimes less comprehensive health benefits plans. This isolates the people who need coverage the most in plans that many of them can ill afford.

The premiums of the plans are affected more by enrollee characteristics, especially age, than by the actuarial value of the benefits offered. In the case of Blue Cross/Blue Shield, both the high and standard options have approximately equivalent benefits from an actuarial standpoint but there is more than a fivefold difference in employee premium rates. Aetna was so impacted by risk segmentation, having retained so many elderly retirees, that its premiums were totally out of line with the actuarial value of the benefits offered when it determined that its plan was no longer viable and decided to withdraw from the Program.

Risk segmentation has also adversely affected the manner in which the Government contribution is set. The "Big Six" formula was devised in 1970 as a means of ensuring that the Government's contribution would be based on representative rates and enrollment levels. The high options of the two Government-wide plans, the two largest employee organization plans and the two largest HMOs were to be used. In 1974, the high options of the two Government-wide plans accounted for 65 percent of total FEHB Program enrollment. Today, only one of those two plans currently exists and accounts for less than 15 percent of total FEHB Program enrollment. However, the Government contribution is still greatly influenced by these non-representative high cost plans.

Economic Inefficiencies

Specific economic inefficiencies were reviewed in some detail in both the TPF&C Report and the Congressional Research Service Report. The absence of competition by plans for entry into and retention by the Program is an example. This leads to a considerable loss of leverage the Federal Government might have exercised in the selection of and negotiations with carriers. Too many plans with only subtle differences in benefits have been made available to subscribers. This has not only added to the confusion of subscribers in making health plan choices: it has multiplied the Government's costs and fragmented its buying power.

The self-renewing nature of FEHB Program contracts, together with the fact that gains and losses are carried forward into the subsequent year's premiums, insulates carriers from true financial risk. Yet, under the current law, the Government and FEHB Program enrollees still pay risk charges and profits, as well as state premium taxes and duplicative administrative expenses. In short, we are spending too many dollars on items that don't translate into actual health benefits or health care services.

The FEHB Program is currently burdened with too many carriers who enter the Program without true competition and remain in the Program indefinitely regardless of merit. The only competition is at the consumer level where it is difficult at best to make an informed choice. Employee organization plans have evolved into additional "Government-wide plans" and charge associate member dues for which no health care services are received. All employees, retirees with Medicare, and retirees without Medicare enrolled in the same plan pay the same premium -- raising questions of equity among these groups. The annual open season resembles a high stakes gambling event for all participants concerned.

II. The Need for Reform

It has been suggested that the current FEHB Program is somehow salvageable and can be made cost effective. Some would contend that risk segmentation is not necessarily bad because it is the high users of health benefits who pay the highest premiums. Every enrollee has an annual opportunity to modify his or her health benefits coverage. Others believe that risk segmentation will eventually become less of a problem as FEHB enrollees become better consumers and/or as the plan and options which are no longer viable from an insurance standpoint, such as Aetna, go out of business.

The aged, the ill, and the infirm should not pay more for insurance coverage that is essential to their well being simply because these individuals are not sufficiently informed and will not select more cost effective coverage. For whatever reason, those most in need of health care are among the least likely to modify their insurance coverage. Even after multiple notices about the plan's termination, over 10,000 elderly Aetna enrollees failed to make timely elections of new coverage. OPM ultimately took unilateral action to place such individuals in a new plan.

Even if OPM possessed the authority to do so, combining unviable plans and options with those that possess more favorable demographics would not cure the Program's ills. Healthy enrollees will continue to distance themselves from the ill and less mobile. An analysis of last year's open season changes revealed that enrollees leaving the Blue Cross Standard Option were lower users of health care than those who joined the option. This trend will be aggravated with the arrival of the displaced Aetna enrollees and could well be a precursor to the demise of the Blue Cross plan within the FEHB Program.

The problems of the FEHB Program are numerous and well documented. We have clearly reached the point for incisive action and resolution of those problems.

III. Statement of Goals and Reform Recommendations

The objectives of OPM's reform recommendations are to continue the principle of cost sharing and informed choice, and offer the best possible insurance coverage for Federal employees and retirees for the money expended. We have to be mindful of the problems experienced to date under the original FEHB Program and the rapidly changing state of the art in creating and administering an employer sponsored health benefits program. We also need to begin with a fiscal management concept that is sound but not inflexible.

The Program must be simpler in form for the participants to understand; it must be more efficient in terms of benefits for premium dollars; and it must be fair to all segments of the enrolled population. In short, FEHB reform should result in (1) an informed choice for Program participants, (2) equity for both employees and retirees, and (3) economic efficiency in the operation of plans benefiting both the enrollees and the Government. The resultant program should be one that prudently purchases quality health care services.

Informed Choice

Problem: There are too many plans with only subtle differences in benefits but tremendous differences in premiums.

Recommendations:

- Give enrollees a clear, understandable choice between (1) five indemnity packages with benefit structures designed to meet varying enrollee needs and with premiums set on a nationwide basis and (2) the HMO alternatives in a given geographic area.
- Require participating HMOs to offer a standard benefits package at a rate adequate to provide these basic benefits. OPM would adjust the HMO rates to provide appropriate cross subsidies between the indemnity plans and HMO plans. Competition between HMOs would be based on price, convenience, and service provided. HMOs would be permitted to offer supplemental packages.

Equity

Problem: Employees, retirees, and Medicare eligibles in a given plan all pay identical premiums. However, these groups actually receive significantly different benefits in return for their premium dollars. The benefits derived by these individuals are largely governed by the benefits of the plan they select during the annual open season and health and Medicare status during the year.

Recommendations:

- Create distinct risk pools for establishing benefits and rates--one for employees and another for retirees; neither subsidizes the other;
- Tailor benefits for each distinct risk pool based on the health insurance needs of that pool;
- In the retiree pool, offer those retirees with Medicare coverage a Medicare Supplemental Policy to fill in the gaps that Medicare does not cover;
- Give all retirees over age 65 who do not have such coverage the voluntary opportunity to buy into that program and to be covered by it and by the Medicare Supplemental Policy.

Economic Inefficiencies

Problem: Numerous indemnity plans now compete for market share, with contracts that renew automatically and which bear no risk. The plans tend to be inefficient in terms of administration and containment of health care costs. The number of such plans cause higher than necessary administrative expenses at the carrier and OPM level.

Recommendations:

- Create five indemnity benefit packages administered through contracts;
- Have the contractors process claims and administer effective cost containment measures such as pre-admission screening and case management;
- Self insure to eliminate state premium taxes and significant amounts in risk charges and duplicative carrier profits.

IV. Steps to Reform

The Administration proposes either to stabilize Government expenditures by using a weighted average formula for determining its contribution under the FEHB Program or to adopt a mix of legislative and administrative initiatives.

The "weighted average" formula would substitute, as a cap on the maximum dollar amount the Government would contribute to each employee's plan, 60 percent of the weighted average of all plans for 60 percent of the simple average of "Big Six" carriers. In 1975 when the "Bix Six" represented 90 percent of all FEHB program usage, the "Big Six" formula served as a useful proxy on which to base a cap on the Government's share of the program. Today, with 321 plans and Aetna (one of the "Bix Six") having decided to leave the FEHB Program, the "Big Six" program no longer reflects actual usage. The weighted average approach thus reflects better the original intent of the FEHB legislation.

The alternative mix of legislative and administrative initiatives would have the same beneficial impact on the budget for FY 1991. Required legislative actions would include the following: Immediate preemption of state premium taxes; unification of the contingency reserves which now exists on a plan by plan basis and are excessive in view of the risks confronting the Program as a whole; and changing the calculation of the FEHB Government contribution from 60 percent of the "Big Six" average to 67 percent of the weighted average, resulting in an aggregate Government share of premium costs of 65 percent.

The two alternative approaches would result in a Federal budget outlay pattern (in millions) as follows:

	FY 1991	1992	1993	1994	1995
Current services baseline outlays*	3,213	4,181	5,089	5,809	6,554
Weighting average proposal	-850	-1,210	-1,390	-1,598	-1,806
Mix of administrative and legislative initiatives	-850	-894	-1,061	-1,304	-1,595

*Represents outlays from OPM FEHB Fund and annuitant account; does not reflect agency FEHB expenses.

Required administrative actions that OPM would undertake under its own authority during the transition year would be consistent with the reform objectives and would lessen the rate of increase in enrollee premiums.

We would take steps to assure that proper coordination takes place with respect to Medicare benefits and that payments did not exceed the specified maximum allowable actual charges. We would also mandate that appropriate cost containment techniques are adopted by participating carriers and that independent assessments of the effectiveness of these techniques and Medicare coordination are reflected in the profit charges accorded to participants.

Once the reform structure is in place, we will seek the optimum in innovative approaches to containing health care costs, and institute state of the art concepts in benefits administration. For example, we plan to establish an experiment for an Administrative Disputes Resolution (ADR) process wherein an FEHB subscriber could submit a claim for damages against a health care provider for malpractice or bodily injury to binding arbitration rather than pursuing litigation. Such an experiment would probably be best suited initially to staff model HMOs and their enrollees. We also plan to work closely with our contractors to formulate innovative strategies to address such health related problems as smoking and negative life style habits. Conversely, we intend to make maximum use of early detection mechanisms and preventive services intervention that have proven clinical effectiveness.

These steps are part of the Administration's commitment to a thorough review of the quality, accessibility, and cost of our nation's health care system, and we will continue to refine our recommendation as part of this review. We are committed to helping the President bring the staggering costs of health care under control while providing the necessary health coverage. The Administration looks forward to working with the Congress to solve the very serious problems facing our health insurance program for Federal employees. We recognize that various proposals for FEHB reform will be considered in the coming months and that no one can be sure what form these changes might eventually take. However, it is imperative that whatever is finally enacted meet the FEHB budget savings included in the President's FY 1991 Budget for FY 1991 of $850 million.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Constance Berry Newman
Director

Attachment # 3

	0-30 DAYS		31-60 DAYS		OVER 60 DAYS		TOTAL RECORDS
	# RECORDS	%	# RECORDS	%	# RECORDS	%	
December 88	3,517	61%	1,437	25%	781	14%	5,735
March 89	5,524	62%	2,151	24%	1,282	14%	8,957
June 89	8,037	79%	1,415	14%	714	7%	10,166
September 89	7,073	79%	1,388	15%	588	6%	9,048
December 89	5,540	78%	1,001	14%	559	8%	7,100

"BIG 13" AGENCY PERFORMANCE FOR RECORDS SUBMITTED WITHIN 30 DAYS

	# COVERED EMPLOYEES (Sep 89)	Dec 88	Mar 89	Jun 89	Sep 89	Dec 89
Post Office	763,575	78%	79%	86%	88%	89%
Army	394,128	57%	48%	75%	70%	69%
Navy	317,244	53%	47%	67%	71%	65%
Air Force	255,593	71%	64%	94%	89%	89%
Veterans Admin	215,912	72%	82%	89%	89%	81%
Agriculture	182,308	66%	75%	86%	90%	84%
Treasury	152,945	10%	28%	53%	60%	62%
HHS	116,067	56%	17%	88%	67%	69%
Justice	76,025	34%	31%	52%	46%	63%
Interior	66,488	46%	60%	82%	76%	91%
DOT	63,615	55%	64%	83%	85%	65%
Army Corps of Engs	38,771	62%	70%	84%	83%	72%
D.C. Govt	27,861	7%	7%	7%	9%	4%
GOVT-WIDE	**2,864,025**	**61%**	**62%**	**79%**	**79%**	**78%**

Attachment # 4

OPM maintains the Central Personnel Data File consisting of employment and transaction (hiring, dismissal, retirement, etc.) data supplied by most executive branch agencies about their employees. While the data file is not intended to serve as an accounting system, it can be used to map general trends in Federal employment. The following data were derived from the CPDF for fiscal year 1987. It should be noted that because of the relatively small employee population in an individual area, such as San Diego, a slight change or error in the data can affect the validity more than similar movement in nationwide totals.

	SAN DIEGO MSA			NATIONWIDE		
Series	Quit Rate	Total Sep.	Average # Emp.	Quit Rate	Total Sep.	Average # Emp.
0007	14.3%	17.9%	84	9.4%	15.2%	4962
1811	2.1	8.5	390	1.3	7.1	16535
1884	0.0	0.0	8	1.7	7.1	295
1896	5.6	12.3	575	5.6	11.7	3214
0083*	5.7	18.1	193	8.6	20.0	6739

* Series 0083 Police is not covered by the definitions of law enforcement officer under the retirement law.

The listed series job titles are:

0007	Correctional Officer
1811	Criminal Investigating
1884	Customs Patrol Officer
1896	Border Patrol Agent
0083	Police

Office of Personnel Management

Congressional Budget Justification

Fiscal Year 1991

[illegible]

OFFICE OF PERSONNEL MANAGEMENT

BUDGET DIGEST

The Office of Personnel Management's FY 1991 budget request includes approximately $9.3 billion in current budget authority. Its major features are:

- a payment of $5.7 billion to the Civil Service Retirement and Disability Fund.
- an appropriation request of $3.5 billion for the Government Payment for Annuitants, Employees Health Benefits for the government's share of health benefits costs for annuitants and survivors who no longer have an agency to contribute the government's share.
- an appropriation request of $8.7 million for the Government Payment for Annuitants, Employees Life Insurance.
- an appropriation request of $113.9 million for Salaries and Expenses to fund the program responsibilities of the Office of Personnel Management. The major activities are:
  - o $42.9 million for Career Entry and Employee Development,
  - o $5.9 million for Investigations,
  - o $21.8 million for Personnel Systems and Oversight,
  - o $6.0 million for Administrative Services, and
  - o $8.0 million for ADP Services.
- an appropriation request of $4.6 million for the Office of the Inspector General, which was established as a statutory entity under the Inspector General Act Amendments of 1988.

In addition, a permanent appropriation of $12.2 billion is submitted for the Payment to Civil Service Retirement and Disability Fund to provide for the contribution of the government's share of retirement costs.

Obligations of $310 million are planned for reimbursable services. Of this total, $19.7 million will be financed through Advances and Reimbursements to the Salaries and Expenses appropriation, $86.5 million through Transfers from Trust Funds, including $3.0 million for the Office of the Inspector General, and $203.9 million through OPM's revolving fund.

OPM requests a personnel ceiling of 5,886 full-time equivalent (FTE) employees for FY 1991. Of these 1,999 will be financed by the Salaries and Expenses appropriation, 339 by Advancements and Reimbursements to Salaries and Expenses, 1,600 by the Transfers from Trust Funds, 1,856 by the Revolving Fund, and 92 by the Office of the Inspector General.

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS

ACCOUNT	FUNCTION	FY 1989 BUDGET AUTHORITY	FY 1989 OUTLAYS	FY 1990 BUDGET AUTHORITY	FY 1990 OUTLAYS	FY 1991 BUDGET AUTHORITY	FY 1991 OUTLAYS
FEDERAL FUNDS:							
GENERAL AND SPECIAL FUNDS:							
SALARIES & EXPENSES, OPM 1/	805	107,270,000	101,989,000	110,942,000	135,774,000	113,886,000	113,739,000
PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION		---	---	---	---	900,000	574,000
SALARIES & EXPENSES, INSPECTOR GENERAL	805	---	---	2,879,000	2,735,000	4,607,000	4,521,000
LIMITATION PAYABLE UNDER TRANSFERS FROM TRUST FUNDS, OPM [NON-ADD]:							
ANNUAL	805	[72,700,000]	---	[69,221,000]	---	[74,379,000]	---
NO-YEAR	805	[1,252,000]	---	[11,600,000]	---	[800,000]	---
LIMITATION PAYABLE UNDER TRANSFERS FROM TRUST FUNDS, INSPECTOR GENERAL [NON-ADD]	805	---	---	[2,164,000]	---	[3,043,000]	---
GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS	551	2,374,414,000	2,499,985,000	3,727,247,000	2,989,215,000	3,509,563,000	3,849,746,000
PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION		---	---	---	---	(726,000,000)	(726,000,000)

1/ FY 1989 amounts include funds for OPM's Office of Inspector General and the Office of Government Ethics which are now seperate appropriations.

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS

ACCOUNT	FUNCTION	FY 1989		FY 1990		FY 1991	
		BUDGET AUTHORITY	OUTLAYS	BUDGET AUTHORITY	OUTLAYS	BUDGET AUTHORITY	OUTLAYS
GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES LIFE INSURANCE..............	602	...	...	2,662,000	2,071,000	8,700,000	7,700,000
PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND:							
CURRENT AUTHORIZATION................	805	4,858,668,000	...	5,211,732,000	...	5,687,105,000	...
PERMANENT INDEFINITE AUTHORIZATION....	805	11,554,349,000	16,413,017,000	11,875,796,000	17,087,528,000	12,203,915,000	17,891,020,000
SUBTOTAL..........................	805	16,413,017,000	16,413,017,000	17,087,528,000	17,087,528,000	17,891,020,000	17,891,020,000
PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION....................		...	...	...	...	(62,888,000)	(62,888,000)
INTERGOVERNMENTAL FUNDS:							
REVOLVING FUND..........................	805	...	(6,370,000)	...	(11,688,000)	...	(2,346,000)
TOTAL, FEDERAL FUNDS.............		18,894,701,000	19,008,621,000	20,931,258,000	20,205,635,000	20,739,788,000	21,076,066,000
TRUST FUNDS:							
CIVIL SERVICE RETIREMENT AND DISABILITY FUND................................	602	48,797,429,000	29,225,412,000	51,791,237,000	31,491,356,000	54,671,580,000	34,263,021,000
PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION....................		...	...	...	...	647,614,000	(2,265,534,000)
EMPLOYEES HEALTH BENEFITS FUND..........	551	...	(1,876,744,000)	...	(441,836,000)	...	(636,319,000)

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS

ACCOUNT	FUNCTION	FY 1989		FY 1990		FY 1991	
		BUDGET AUTHORITY	OUTLAYS	BUDGET AUTHORITY	OUTLAYS	BUDGET AUTHORITY	OUTLAYS
EMPLOYEES LIFE INSURANCE FUND...........	602	---	(839,442,000)	---	(924,103,000)	---	(947,480,000)
PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION....................		---	---	---	---	---	---
RETIRED EMPLOYEES HEALTH BENEFITS FUND..	551	---	(58,000)	---	(100,000)	---	(97,000)
INTRAFUND TRANSACTIONS (FOREIGN SERVICE)	602	(648,000)	(648,000)	(647,000)	(647,000)	(647,000)	(647,000)
TOTAL, TRUST FUNDS...............		48,796,781,000	26,508,520,000	51,790,590,000	30,124,670,000	55,318,547,000	30,412,944,000
INTERFUND TRANSACTIONS:							
RE-EMPLOYED ANNUITANTS..................	602	(31,441,000)	(31,441,000)	(32,080,000)	(32,080,000)	(32,733,000)	(32,733,000)
PAYMENT TO CSRDF.........................	805	(16,413,017,000)	(16,413,017,000)	(17,087,528,000)	(17,087,528,000)	(17,891,020,000)	(17,891,020,000)
PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION....................		---	---	---	---	62,888,000	62,888,000
TOTAL, OFFICE OF PERSONNEL MANAGEMENT......		51,247,024,000	29,072,683,000	55,602,240,000	33,210,697,000	58,197,470,000	33,628,145,000

OFFICE OF PERSONNEL MANAGEMENT

SUMMARY OF BUDGET ESTIMATES BY FUND

	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate	
	Full-Time Equivalents	Amounts	Full-Time Equivalents	Amounts	Full-Time Equivalents	Amounts
OBLIGATIONS BY FUND SOURCE:						
Salaries and Expenses	1,932	$ 107,270,000	1,972	$ 110,942,000	1,999	$ 113,886,000
Reimbursements to Salaries and Expenses	291	14,504,000	331	18,493,000	339	19,748,000
Limitation on Transfers from Trust Funds	1,529	73,952,000	1,545	77,774,000	1,600	83,495,000
Inspector General, Salaries and Expenses	---	---	39	2,879,000	56	4,607,000
Inspector General, Limitation on Transfers from Trust Funds	---	---	27	2,164,000	36	3,043,000
Government Payment for Annuitants, Employees Health Benefits	---	2,441,084,000	---	3,304,064,000	---	3,902,250,000
Government Payment for Annuitants, Employee Life Insurance	---	---	---	2,462,000	---	8,200,000
Payment to Civil Service Retirement and Disability Fund	---	16,413,017,000	---	17,087,528,000	---	17,891,020,000
Revolving Fund	1,898	176,166,000	1,856	195,375,000	1,856	203,929,000
TOTAL FTE AND OBLIGATIONS	5,650	$19,225,993,000	5,770	$20,801,681,000	5,886	$22,230,178,000

SUMMARY OF BUDGET ESTIMATES BY ACTIVITY

	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate	
	Full-time Equivalents	Amounts	Full-Time Equivalents	Amounts	Full-Time Equivalents	Amounts
OBLIGATIONS BY ACTIVITY:						
Career Entry and Employee Development	1,758	$ 144,047,000	1,693	$ 153,812,000	1,697	$ 158,463,000
Retirement and Insurance	1,267	18,903,121,000	1,318	20,448,342,000	1,370	21,859,477,000
Investigations	1,339	77,170,000	1,406	88,275,000	1,423	94,101,000
Personnel Systems and Oversight	337	19,937,000	371	22,078,000	381	23,012,000
Administrative Services	396	16,968	412	18,030,000	412	19,120,000
ADP Services	252	19,582,000	242	20,968,000	245	22,000,000
Executive Services	213	12,897,000	193	12,270,000	193	12,610,000
Office of Government Ethics	30	1,817,000	---	---	---	---
Other Programs	36	4,256,000	53	6,590,000	57	6,578,000
Inspector General	---	---	66	5,043,000	92	7,650,000
Mandatory Payments	22	26,198,000	16	26,273,000	16	27,167,000
TOTAL FTE AND OBLIGATIONS	5,650	$19,225,993,000	5,770	$20,801,681,000	5,886	$22,230,178,000

SALARIES AND EXPENSES

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate 1/	
	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts
PROGRAM BY ACTIVITIES:						
Career Entry & Employee Development	1,013	$ 40,546,000	1,048	$ 41,493,000	1,052	$ 42,900,000
Retirement and Insurance	---	57,000	---	---	---	---
Investigations	173	5,266,000	182	5,437,000	199	5,912,000
Personnel Systems and Oversight	332	19,261,000	366	20,878,000	376	21,812,000
Administrative Services	135	6,177,000	130	6,287,000	124	5,980,000
ADP Services	107	7,324,000	99	8,025,000	99	7,962,000
Executive Services	93	5,524,000	88	6,034,000	86	6,047,000
Office of Government Ethics	30	1,817,000	---	---	---	---
Other Programs	27	2,237,000	43	3,914,000	47	3,943,000
Mandatory Payments	22	19,061,000	16	18,874,000	16	19,330,000
TOTAL FTE AND OBLIGATIONS	1,932	$107,270,000	1,972	$110,942,000	1,999	$113,886,000
BUDGET AUTHORITY		$107,270,000		$110,942,000		$113,886,000
OUTLAYS		$101,989,000		$135,774,000		$113,739,000

1/ Excludes $900,000 and 4 FTE for Public Service Scholarship program for which legislation is being proposed

SALARIES AND EXPENSES

SUMMARY OF CHANGES

FY 1990 Total Obligations........ $110,942,000

Program Changes

Career Entry and Employee Development:	Increases to improve service to the public at the point of contact ($1,000,000); offset by a decrease in job sharing initiatives ($250,000).	750,000
Investigations:	Increase to produce in additional 36,500 national Agency checks and National agency checks and inquiries; eliminate backlogged cases, and leave normal workload on hand at the end of the year.	389,000
Personnel Systems and Oversight:	Increase ($1,300,000) for pay reform initiatives; offset by decrease (-$718,000) for one-time funding of health promotion and disease prevention project.	582,000
Administrative Services:	Increase to acquire a commercial core financial management system that will permit adoption of the Government's standard general ledger.	259,000
ADP Services:	Decrease for one-time funding of study of OPM's ADP requirements.	-300,000
Other Programs:	Increase ($250,000) to establish and support the President's Advisory Commission on the Public Service; offset by decreases for reduction in number of Voting Rights observations ($-106,000) and elimination of balance of funding for Federal Executive Boards (-$200,000).	- 56,000
Mandatory Payments:	Increase for rent ($672,000); decrease for long-distance telephone service (-$344,000);increase for other costs ($124,000).	452,000

All Activities:	Decrease resulting from change in the Salaries and Expenses program's share of overall administrative, executive and ADP support services.	-716,000
Non-Program Changes:		
All Activities:	Increase to fund 50% of the proposed January 1991 General Schedule ($956,000) and executive ($225,000) pay raises and 50% of expected inflation in nonsalary costs ($403,000).	1,584,000
	Total Change	2,944,000
FY 1991 Total Obligations		$113,886,000

An increase in obligations of $900,000 which may result from proposed legislation to establish a public service schorarship program is not included in the above total.

SALARIES AND EXPENSES

CAREER ENTRY AND EMPLOYEE DEVELOPMENT

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	1,013	1,048	1,052
Total Obligations	$40,546,000	$41,493,000	$42,900,000
Workload Indicators			
Applications Processed for Federal Employment	567,821	600,000	600,000
Employment Inquiries Answered	2,735,134	2,800,000	2,800,000

Description of Program

The Office of Personnel Management provides governmentwide recruiting, employment and training programs to meet the personnel needs of the Federal government. Among the services provided are:

Staffing and Examining: Develops and revises regulations and guidelines for Federal employment and administers a nationwide system to test, rate and certify applicants for Federal positions in the U. S. and abroad. Maintains Job Information Centers throughout the country and provides initiative and oversight on delegated examining and employment authority to agencies. Designs and improves written tests, recruitment and other selection procedures for employment in Federal occupations. Adapts tests to accommodate people with disabilities and develops alternative examinations and evaluation techniques to ensure equality in testing for various entry level occupations. Develops and revises qualification standards for Federal occupations. Maintains inventories of applicants for specific Federal occupations and refers eligible candidates to agencies on request.

Recruiting: Identifies and assesses staffing needs and trends. Communicates these needs to recruitment sources and helps agencies develop recruitment programs. Provides the public, including academic and constituency groups, with information about available Federal employment through OPM regional and area offices, state job services and the media, both print and video. Provides planning, direction and leadership for all employment programs relating to: veterans, minority groups, women, people with disabilities, students, and interns.

Administrative Law Judges: Operates governmentwide recruitment, examination, personnel and policy programs for Administrative Law Judges and controls the allocation of these positions to Federal agencies.

Employee and Executive Development: Provides governmentwide training policy and oversight to assure agencies comply with law and regulation and that Federal training is well managed and cost effective. Coordinates Federal training activity to get agencies to share their training resources. Provides advice to help agencies better plan, monitor and evaluate their internal training programs and to make the best use of the latest training technology.

Workforce Quality: Monitors whether the Government is attracting and retaining top performers and, if not, devises solutions to reverse the loss of talent.

Resource Changes

An increase of $1,000,000 and 4 FTE to improve service to the public at the point of contact. OPM will assess the effectiveness of available training; develop a governmentwide training strategy; train employees to be responsive to public expectations and needs. In addition, to heighten awareness of service excellence, OPM will hold a series of conferences and briefings.

An increase of $657,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

A decrease of $250,000 in funding for job sharing initiatives which in FY 1990 included the design of a clearinghouse to promote the job sharing concept and match (1) jobs with applicants and (2) applicants with applicants to share a common job.

RETIREMENT AND INSURANCE

Resource Requirements	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Full-Time Equivalents	---	---	---
Total Obligations	$ 57,000	---	---

Description of Program

The Office of Personnel Management finances the administration of its retirement and insurance programs through transfer of funds from the appropriate trust fund (see Limitations on Transfers from Trust Funds). In FY 1989, OPM conducted a one-time study of employee health benefits under its Civil Service 2000 Initiative.

INVESTIGATIONS

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	173	182	199
Total Obligations	$5,266,000	$5,437,000	$5,912,000
Workload Indicators			
National Agency Check and Inquiry Cases	205,360	200,500	237,000

Description of Program

The Office of Personnel Management is responsible for determining the fitness and suitability of applicants and appointees to positions in the Federal government that are classified as non-sensitive or non-critical-sensitive.

The types of investigations performed include: (1) National Agency Check (NAC) investigations which consist of a check of the file indices of the Office of Personnel Management, Federal Bureau of Investigation and, if appropriate, the Department of Defense; and (2) National Agency Check and Inquiries (NACI) investigations which consist of the NAC plus written inquiries to former employers, supervisors, references, law enforcement officials and schools attended.

OPM also provides advice and assistance to agencies in setting up and operating their security and suitability programs.

In addition, OPM conducts on-site appraisals of security and suitability programs of other agencies. During these appraisals OPM advises agencies on policy matters and coordinates interagency personnel investigation programs with the agency security officers.

Resource Changes

An increase of $389,000 and 17 FTE to produce an additional 36,500 NAC/NACI's, reducing inventory of current backlogged cases, to a normal workload of 45,000 cases on hand at the end of the year.

An increase of $86,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

PERSONNEL SYSTEMS AND OVERSIGHT

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	332	366	376
Total Obligations	$19,261,000	$20,878,000	$21,812,000
Workload Indicators			
Personnel Management Evaluations	653	600	600

Description of Program

OPM's Personnel Systems and Oversight activity is responsible for: developing and improving systems for Federal pay, leave, and performance management; assuring that agencies comply with the laws, rules, and regulations that govern the Federal personnel system; developing classification standards; pursuing personnel innovations; providing leadership for employee and labor relations and employee health programs and responding to information needs concerning the Federal civilian workforce. Specific functions include:

Developing and Improving Pay and Leave Administration Policy: OPM provides leadership in reforming the Federal pay system in order to enable the Government to compete for talent and permit cost-effective use of scarce payroll dollars. This initiative and its implementation will be a major OPM function during the next several years. In addition, OPM develops policies, regulations and guidance for the administration of pay rates, hours of duty, premium pay (including implementing the Fair Labor Standards Act), leave (including leave transfer and leave bank), and the establishment of special rate allowances and differentials. OPM provides technical support to the President's Pay Agent in surveying and establishing pay rates for the General Schedule and other pay systems, conducts special studies, develops policies and procedures for the operation of the General Schedule, and establishes local prevailing rates under the Federal Wage System.

Improving Performance Management: OPM provides leadership to other agencies in the operation of their performance appraisal systems, the refining and improving of critical system components, and the developing of links to other personnel areas, including organizational performance and evaluation of agency program effectiveness. Support is provided to agencies for improving their performance management by developing performance measurement techniques for the Federal sector, researching performance improvement methods, and providing technical assistance to agencies. OPM also fulfills leadership responsibilities in the Federal Government by promoting effective incentive awards programs. In addition, OPM is responsible for developing and evaluating policy for, and monitoring the operation of, the government performance pay system for grade 13-15 managers.

Conducting Evaluations: OPM, through its evaluation program, ensures that Federal programs are operating in a manner consistent with pertinent laws, regulations and OPM guidance, assists agencies in operating effective, cost efficient personnel programs, and develops information for use in OPM and agency personnel program refinement and policy development. The program combines on-site visits to installations governmentwide with information collection and analysis designed to provide statistically valid assessments and recommendations.

Developing Classification Standards: OPM develops and issues standards for the classification of Federal jobs by grade level and type of position, oversees and assists agencies in developing standards for specific occupations, and develops new and innovative classification systems and methods of standards development, and provides leadership by developing policy, providing advice, assistance and information on issues affecting the classification program and career field.

Deciding Classification Appeals: OPM manages a nationwide classification and job grading appeals program issuing final decisions on employee appeals of agency classification actions and providing job advice on classification-related issues in discrimination complaints and other matters. In addition, OPM decides appeals concerning termination of grade and pay benefits resulting from declination of a reasonable offer of a position as provided under section 5366 of Title 5, U.S.C.

Managing Human Resource Systems Innovation and Simplification: OPM identifies new directions and trends in human resource management and widely disseminates information to agencies to accelerate the transfer of knowledge. OPM spearheads the design, implementation, and evaluation of innovative human resource systems through promoting agency interest and involvement in research and demonstration projects and other simplification and deregulation initiatives.

Managing Employee and Labor Relations: OPM takes a leadership role in the management of Federal employee and labor relations programs by formulating policies, providing advice and assistance to agencies, coordinating agency responses to third-party decisions involving personnel policies, consulting with unions on governmentwide rules and regulations affecting conditions of employment, and collecting and disseminating information on the Federal labor relations program.

Managing Employee Health Programs: OPM takes a leadership role in promoting the improvement of the physical and mental health of the Federal workforce and assists agencies in implementing programs to achieve these goals. This effort includes strengthening Employee Assistance Programs (EAP's), with particular emphasis on the role of EAP's in achieving a drug-free workplace and helping employees balance work and family responsibilities.

Deciding Privacy Act Appeals: OPM publishes Governmentwide systems notices required by the Privacy Act of 1974 on behalf of all agencies that use or maintain personnel records subject to OPM's jurisdiction. In addition, OPM decides appeals by data subjects from agency denials of access to or amendment of their personnel records.

Providing Workforce Information: OPM issues personnel recordkeeping and personnel processing procedures used by all Federal operating personnel offices. OPM collects, maintains, and analyzes data on the Federal civilian workforce to support the information needs of OPM programs, central management agencies, Congress, and other users.

Resource Changes

An Increase of $1,300,000 and 10 FTE to develop the technical infrastructure needed to support reforms of the pay system and to communicate effectively with the workforce and its managers about these changes. Surveys are needed to test the survey potential of pay areas to determine the adequacy of samples to set pay rates. Expert staff and contractors are required to: 1) determine if current categories, grade levels, and job benchmarks are representative of the diversity of the General Schedule workforce, or if new definitions, benchmarks, and/or categories are needed; 2) define the size and shape of geographic areas which would be most cost effective for increasing the Government's market sensitivity; 3) research ways in which employees can be most equitably converted to the new pay system; 4) develop mechanisms to familiarize the workforce with the evolution and goals of the Pay Reform Initiative; and 5) research the need for, and develop as appropriate, new pay and classification systems for occupational categories which may be proposed. Without adequate support, our ability to put in place a comprehensive pay reform system that addresses all the markets involved and makes the Federal Government competitive in the labor marketplace will be severely curtailed.

A decrease of $718,000 for one-time funding of the Federal Employee Health Promotion and Disease Prevention Project. As part of its FY 90 appropriations OPM received funds to continue one demonstration project, to determine the most cost-effective means to furnish health protection and promotion services to Federal employees, encourage adoption of good health habits, reduce health risks, reduce medical expenses through health intervention and protection programs, and enhance employee productivity and reduce the Federal Government's health-related liability. OPM will prepare a project report for Congress in early FY 91.

An Increase of $352,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

ADMINISTRATIVE SERVICES

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	135	130	124
Total Obligations	$6,177,000	$6,287,000	$5,980,000

Description of Program

This activity provides administrative and financial support services to OPM programs including: financial management and operations; publishing services; procurement and property management; building, facilities, and telecommunications management; agencywide services for space and lease management; graphics services; personnel, EEO, and human resources development activities; health unit services; internal control activities; and internal security

Resource Changes

An increase of $259,000 to install, test, document and train nationwide staff on operating a commercial ("off-the-shelf") core financial management system. Included in this amount are funds to revise OPM financial policies and develop procedures for the new accounting system.

A decrease of $665,000 and 6 FTE as a result of change in the Salaries and Expenses program's share of overall administrative services.

An increase of $99,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

ADP SERVICES

Resource Requirements	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Full-Time Equivalents	107	99	99
Total Obligations	$7,324,000	$8,025,000	$7,962,000

Description of Program

This activity provides Automated Data Processing (ADP) services to support specific program and agencywide operational needs. These services include management and operation of the agency's central computing and office automation systems, programming, maintenance and technical support, systems analysis and ADP planning and policy development.

Resource Changes

A decrease of $300,000 due to completion of the FY 1990 one time study of OPM's long term ADP requirements.

An increase of $99,000 as a result of change in the Salaries and Expenses program's share of overall ADP services.

An increase of $138,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

EXECUTIVE SERVICES

Resource Requirements	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Full-Time Equivalents	93	88	86
Total Obligations	$5,524,000	$6,034,000	$6,047,000

Description of Program

This activity provides executive services to manage and direct OPM policies and programs. These include: executive direction; policy development; oversight of OPM activities; planning and budget; legal advice and representation; dissemination of information to external audiences; executive position staffing, management, and oversight; and management of OPM's legislative program and Congressional liaison.

Resource Changes

A decrease of $150,000 and 2 FTE as a result of change in the Salaries and Expenses program's share of overall executive services.

An increase of $163,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

OTHER PROGRAMS

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	27	43	47
Total Obligations	$2,237,000	$3,914,000	$3,943,000
Workload Indicators			
President's Commission on Executive Exchange, Nominees Accepted for Placement	36	35	45
White House Fellowship Applications	815	1,315	1,315
Voting Rights Observers	551	900	800

Description of Programs

FEDERAL PREVAILING RATE ADVISORY COMMITTEE (FPRAC): OPM provides a chairperson and administrative staff support to the FPRAC in its study of the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C.

PRESIDENT'S ADVISORY COMMISSION ON THE PUBLIC SERVICE: The Commission, to be established by Executive Order, is proposed as an on-going advisory group comprised of distinguished individuals to help focus and maintain national attention on serious problems facing the Federal public service and to advise the President on ways to strengthen the image of the public service in American life and increase interest among American students in pursuing careers in the public service. The Commission will provide a plan for follow-through on the recommendations made by the Volcker Commission for major reform of the Federal pay system, greater attention to executive training and development, and improving the image of the public service.

PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE: The President's Commission on Executive Exchange was created in 1969 by Executive Order 11451. The Executive Exchange program pursues mutual understanding and cooperation between private industry and the Federal government through the exchange of senior level executives. The exchange program was expanded in 1987 by Executive Order 12591 which directs the Commission to create an exchange program for scientists and engineers in the public and private sectors to take temporary assignments in the opposite sector. Executive Order 11451 also authorizes OPM to provide staff support and administrative services to the Commission.

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS: The President's Commission on White House Fellowships was created by Executive Order 11183 to provide gifted and highly motivated young Americans with firsthand experience in the process of government early in their careers. The order also authorizes OPM to provide the Commission with staff support and administrative services.

VOTING RIGHTS: Under the Voting Rights Act of 1965 as amended, OPM appoints examiners and other persons to prepare and maintain lists of eligible voters in states or other political subdivisions designated by the Attorney General; appoints hearing officers to adjudicate challenges to voter lists; receives complaints from eligible voters claiming denial of the right to vote, and assigns personnel at the request of the Attorney General to observe elections and prepare related reports.

FEDERAL EXECUTIVE BOARDS: The Federal Executive Boards function in four general areas: providing a forum for the exchange of information between Washington, D.C. and the field about programs, management methods and administrative problems; coordinating of local approaches to national programs and such local interagency programs as may be approved by the Director of the Office of Personnel Management; communicating management initiatives and other concerns for the improvement of coordination; and, referring to the national level those problems that cannot be resolved locally.

Resource Changes

An increase of $250,000 and 4 FTE to provide the President's Advisory Commission on Public Service with staff support, travel and per diem. Commission members will serve without compensation.

A decrease of $106,000 will result from a decrease in the projected number of required Voting Rights observations.

A decrease of $200,000 results from elimination of balance of funding for the Federal Executive Boards.

An increase of $85,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

MANDATORY PAYMENTS

Resource Requirements	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Full-Time Equivalents	22	16	16
Total Obligations	$19,061,000	$18,874,000	$19,330,000

Description of Program

This activity funds mandatory overhead expenses which are necessary for the operation of all programs. These costs include:

Rent: Reimbursements to General Services Administration for space occupied and services provided in buildings under control of the Federal government.

Mail: Reimbursements to the U.S. Postal Service for parcel post and penalty mail.

Federal Telecommunications System: Reimbursements to GSA for long distance telephone service.

Executive Training: Costs of sending OPM executives to the Federal Executive Institute, the Executive Seminar Centers and other training sessions and seminars.

Senior Executive Awards: Costs of cash awards given to members of OPM's Senior Executive Service based on exceptional achievement as authorized by the Civil Service Reform Act of 1978 (P.L. 95-454).

Workers Compensation Program: Reimbursements to the Department of Labor for costs of compensation and medical benefits paid by the Office of Workers Compensation Programs for injuries incurred by OPM employees.

Joint Financial Management Improvement Program: Covers OPM's share of the JFMIP program.

Federal Register and Code of Federal Regulations Printing: Costs of printing changes to Federal Personnel Manuals, executive announcements and other printing in the Federal Register and Code of Federal Regulations.

Consolidated Federal Funds Report: Costs for a report on the geographic expenditures of the Federal government mandated by the Consolidated Federal Fund Amendments of 1985, P.L. 99-547, and prepared by the Bureau of the Census for dissemination to Congress and the general public.

Presidential Management Intern Program: Cost of centrally funding Presidential Management Interns within OPM. This program was established by Executive Order 12645 in 1977 to attract to the Federal service outstanding individuals who have an interest in, and commitment to, a career in public policies and programs.

Resource Changes

An increase of $452,000 which includes $672,000 for rent increases based on GSA rates and changes in space holdings, a decrease of $344,000 attributable to savings in long distance telephone service with full implementation of FTS 2000, and a net increase of $124,000 in all other costs.

An increase of $4,000 to fund 50% of the proposed 1991 General Schedule pay increase.

SALARIES AND EXPENSES

PUBLIC SERVICE SCHOLARSHIP PROGRAM

Proposed for Later Transmittal

Total Obligations $900,000

Proposed Legislation

The Administration is preparing a legislative package to establish a public service scholarship program. Under this program, outstanding candidates for the public service would receive financial assistance towards the costs of undergraduate education in return for entering into a commitment to complete specified periods of Federal civilian employment. This program will require new authorizing legislation prior to implementation.

An Increase of $900,000 and 4 FTE will support the establishment of this program.

ADVANCES AND REIMBURSEMENTS TO SALARIES AND EXPENSES

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate	
	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts
PROGRAM BY ACTIVITIES:						
Career Entry & Employee Development	14	$ 554,000	7	$ 843,000	7	$ 843,000
Retirement and Insurance	4	102,000	5	94,000	5	94,000
Investigations	8	587,000	15	1,400,000	15	1,400,000
Personnel Systems and Oversight	5	676,000	5	1,200,000	5	1,200,000
Administrative Services	174	7,005,000	199	8,065,000	204	9,044,000
ADP Services	24	1,701,000	30	2,491,000	30	2,524,000
Executive Services	62	3,773,000	70	4,220,000	73	4,463,000
Other Programs	---	106,000	---	180,000	---	180,000
TOTAL FTES AND OBLIGATIONS	291	$ 14,504,000	331	$ 18,493,000	339	$ 19,748,000
BUDGET AUTHORITY		---		---		---
OUTLAYS		---		---		---

ADVANCES AND REIMBURSEMENTS TO SALARIES AND EXPENSES

SUMMARY OF CHANGES

FY 1990 Total Obligations	$18,493,000
Program Changes	
Increase to acquire a commercial core financial management system that will permit adoption of the Government's standard general ledger.	358,000
Increase resulting from changes in the share of overall internal administrative, executive, and ADP support services financed on a reimbursable basis.	599,000
Non-Program Changes	
Increase to fund 50% of the proposed 1991 General Schedule and executive pay raises and 50% of expected inflation in non-salary costs.	298,000
Total Changes	1,255,000
FY 1991 Total Obligations	$19,748,000

ADVANCES AND REIMBURSEMENTS TO SALARIES AND EXPENSES

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	291	331	339
Total Obligations	$14,504,000	$18,493,000	$19,748,000

Description of Program

OPM provides services to other agencies on a reimbursable basis under the authority of the Economy Act when it possesses special skill and technical expertise that are either more readily available or more economical than alternative public or private sources. Major reimbursable services include technical assistance on staffing, personnel management and investigation. In addition, OPM finances internal administrative and executive services and ADP support on a reimburable basis.

Resource Changes

An increase of $358,000 to install, test, document and train nationwide staff on operating a commercial ("off-the-shelf") core financial management system. Included in this amount are funds to revise OPM financial policies and develop procedures for the new accounting system.

An increase of $599,000 and 8 FTE resulting from changes in the share of overall internal administrative, executive, and ADP support financed on a reimbursable basis.

An increase of $298,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises and 50% of expected inflation in non-salary costs.

LIMITATION ON TRANSFERS FROM TRUST FUNDS

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate 2/	
	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts
PROGRAM BY ACTIVITIES:						
Retirement and Insurance	1,263	$48,861,000	1,313	$54,194,000	1,365	$57,913,000
Investigations	---	11,000	1	35,000	1	35,000
Administrative Services	87	3,786,000	83	3,678,000	84	4,096,000
ADP Services	121	10,557,000	113	10,452,000	116	11,514,000
Executive Services	58	3,600,000	35	2,016,000	34	2,100,000
Mandatory Payments	---	7,137,000	---	7,399,000	---	7,837,000
TOTAL FTES AND OBLIGATIONS	1,529	$73,952,000	1,545	$77,774,000	1,600	$83,495,000
BUDGET AUTHORITY		---		---		---
OUTLAYS		---		---		---
LIMITATION 1/						
Annual Limitation		$72,700,000		$69,221,000		$74,379,000
Limitation Available Until Expended		1,252,000		11,600,000		800,000
Total		$73,952,000		$80,821,000		$75,179,000

1/ Note: OPM's Limitation on Transfers from Trust Funds includes both annual amounts and amounts available until expended for costs incurred in implementing the recordkeeping system of the Federal Employees Retirement System (FERS). The amounts authorized to be transferred from the appropriated trust funds for implementation of the Federal Employees' Retirement System automated recordkeeping system in this appropriation request or prior appropriation acts, may be transferred at any time the OPM deems appropriate.

2/ Note: FY 1991 obligations include both current FY 1991 limitation of $74,379,000 and $9,116,000 in prior year limitation still available for implementing the FERS recordkeeping system.

LIMITATION ON TRANSFERS FROM TRUST FUNDS

SUMMARY OF CHANGES

FY 1990 Total Obligations		$ 77,774,000
Program Changes		
Retirement and Insurance:	Increases to implement the FERS Automated Processing System ($563,000); to return to the necessary levels of overtime and program support for retirement and insurance operations ($562,000); to improve the quality of information provided to CSRS and FERS beneficiaries ($474,000); to provide for staff training ($950,000); and to process new and growing workloads ($460,000).	3,009,000
Administrative Services:	Increase to acquire a commercial core financial management system that will permit adoption of the Government's standard general ledger.	172,000
ADP Services:	Increase for additional staff for FERS and annuity roll system enhancement projects ($135,000); for contractor systems design and programming support for FERS and annuity roll redesign ($103,000); and to upgrade data storage controllers and increase system storage capacity ($715,000).	953,000
Mandatory Payments:	Increase for rent ($619,000); decrease for long distance telephone ($-209,000); increase in other costs ($24,000).	434,000
All Activities:	Increase resulting from change in Trust Fund program's share of overall administrative, executive and ADP support services.	117,000
Non-Program Changes:		
All Activities:	Increase to fund 50% of proposed 1991 General Schedule ($645,000) and executive ($92,000) pay raises and 50% of expected inflation in non-salary costs ($299,000).	1,036,000
	Total Change	5,721,000
FY 1991 Total Obligations		$83,495,000

LIMITATION ON TRANSFERS FROM TRUST FUNDS

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	1,529	1,545	1,600
Total Obligations	$73,952,000	$77,774,000	$83,495,000
Workload Indicators			
Annuitants on the Retirement Roll:			
Civil Service Retirement and Disability Fund	2,121,617	2,183,627	2,245,637
Panama Canal Construction Act	13	11	9
Lighthouse Widows Act	168	160	152
Total	2,121,798	2,183,798	2,245,798
Participants in the Civil Service Retirement and Disability Fund (employees and annuitants)	5,003,882	5,065,882	5,127,882
Participants in the Federal Employees Group Life Insurance Program (employees and annuitants)	4,163,000	4,203,000	4,243,000
Participants in the Employees Health Benefits Program (employees and annuitants)	4,050,000	4,090,000	4,130,000

Workload Indicators	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Participants in the Retired Employees Health Benefits Program (annuitants)	30,600	26,179	22,991
Claims Processed (Annuity, Disability, Death, Refund and Deposit)	388,000	393,000	391,000
Retirement Inquiries Answered	908,000	950,000	975,000

Description of Program

OPM finances the administration of its retirement and insurance programs through transfers of trust funds (subject to annual limitation by Congress) to its Salaries and Expenses account. OPM administers the following trust funds: the Civil Service Retirement and Disability Fund, the Federal Employees Group Life Insurance Fund, the Federal Employees Health Benefits Fund and the Retired Employees Health Fund. The primary program workloads include: processing annuity, disability, death, refund and deposit claims; responding to annuitant, employee and agency inquiries on benefit program matters; negotiating health and life insurance contracts with carriers and auditing the compliance with contract terms; conducting the health benefits open season; and providing actuarial analysis of funding and cost implications of changes in benefits coverage or populations based on proposed legislation and/or economic assumptions. In addition, OPM has begun to implement and administer the Basic Benefit Plan of the new Federal Employees Retirement System whose funds are included in the Civil Service Retirement and Disability Fund. The automated recordkeeping system that will support the FERS Basic Benefit Plan will be developed primarily by private sector systems developers.

Resource Changes

An increase of $563,000 and 3 FTE in expenditures for the Federal Employees Retirement System (FERS) Automated Processing System (FAPS) Project to design and install the system's ADP platform; complete the general design, or blueprint, for the project including determining it's full range of functionality and identifying sub-system requirements and specifications; initiate the transfer of Individual Retirement Records (IRR's) to OPM's centralized database by creating a formal plan for the conversion process, standardizing record formats and undertaking limited data entry; implement the Retirement and Insurance Transfer System (RITS), which will automate the transfer of agency benefit payments to OPM. Although FAPS obligations will increase by $563,000 in FY 1991, OPM is requesting a reduction of $10,800,000 in FAPS no-year trust fund limitation from $11,600,000 in FY 1990 to $800,000 in FY 1991.

An increase of $950,000 and 30 FTE to provide a comprehensive, ongoing training program aimed at improving the skills and productivity of staff assigned to the retirement operations.

An increase of $460,000 and 19 FTE to process new and growing workloads (FEHB reform, Spouse Equity related court orders, CSRS offset claims, etc.) while maintaining current timeliness standards and improving the accuracy of claims processing and annuity roll maintenance.

An increase of $474,000 to improve the quality of information provided to CSRS and FERS beneficiaries by adding an annual mailing highlighting program changes (e.g., Medicare Catastrophic repeal, Aetna withdrawal from the FEHB program, FEHB reform).

An increase of $562,000 to return to necessary levels of overtime and program support for the retirement and insurance operations.

An increase of $172,000 to install, test, document and train nationwide staff on operating a commercial ("off-the-shelf") core financial management system. Included in this amount are funds to revise OPM financial policies and develop procedures for the new accounting system.

An increase of $953,000 and 3 FTE which includes $135,000 to provide additional staff for FERS and annuity roll system enhancement projects without interruption in day-to-day operations; $103,000 for contractor systems design and programming support for FERS and annuity roll redesign; and $715,000 to upgrade data storage controllers and increase system storage capacity.

An increase of $434,000 in mandatory payments which includes $619,000 for rent increase based on GSA rates and additional storage and ADP space in Boyers, Pennsylvania, a decrease of $209,000 attributable to savings in long distance telephone service with full implementation of FTS 2000, and a net increase of $24,000 in all other programs costs.

An increase of $117,000 reflecting a change in the Trust Fund program's share of overall administrative support.

An increase of $1,036,000 to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in non-salary costs.

OFFICE OF THE INSPECTOR GENERAL

SALARIES AND EXPENSES
AND
LIMITATION ON TRANSFERS FROM TRUST FUNDS

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual 1/		FY 1990 Estimate		FY 1991 Estimate	
	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts	Full-time Equivalents	Amounts
PROGRAM BY ACTIVITIES:						
Direct Program (Salaries and Expenses)	---	---	39	2,879,000	56	4,607,000
Reimbursable Program (Trust Funds)	---	---	27	2,164,000	36	3,043,000
TOTAL FTES AND OBLIGATIONS	---	---	66	5,043,000	92	7,650,000
BUDGET AUTHORITY	---	---	---	2,879,000	---	4,607,000
OUTLAYS	---	---	---	2,735,000	---	4,521,000
LIMITATION ON TRANSFERS FROM TRUST FUNDS	---	---	---	2,164,000	---	3,043,000

1/ Funding for the Office of the Inspector General in FY 1989 was included in the Office of Personnel Management, Salaries and Expenses appropriation and Limitation on the Transfers from Trust Funds.

OFFICE OF THE INSPECTOR GENERAL

SALARIES AND EXPENSES

SUMMARY OF CHANGES

FY 1990 Total Obligations	$2,879,000
Program Changes	
Increase to expand the criminal investigations program to permit the development of a nationwide caseload.	530,000
Increase to strengthen capability to audit OPM's operation of retirement and insurance programs.	500,000
Increase to strengthen capability to audit OPM's operation outside the retirement and insurance area.	235,000
Increases in cost of mandatory payments, primarily rent increases based on GSA rates and change in 1990 space holdings.	210,000
Increase to reflect change in the Inspector General's share of overall OPM administrative support.	168,000
Non-Program Changes	
Increase to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in nonsalary costs.	85,000
Total Change	1,728,000
FY 1991 Total Obligations	$4,607,000

OFFICE OF THE INSPECTOR GENERAL

SALARIES AND EXPENSES

	FY 1989 Actual 1/	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	---	39	56
Total Obligations	---	$2,879,000	$4,607,000
Workload Indicators			
Audit Reports Issued	---	100	130
Investigative Cases	---	85	350

Description of Programs

The Office of Personnel Management's Office of Inspector General (OIG) was established as a statutory entity under the Inspector General Act Amendments of 1988, P.L. 100-504, effective April 16, 1989, and now holds all of the responsibilities and authorities accorded to Inspectors General under the original Inspector General Act of 1978, P.L. 95-452. The Office of Inspector General is charged with establishing policies for, and conducting and coordinating efforts which promote economy, efficiency, and integrity in OPM's activities and which prevent and detect fraud, waste, and abuse in the agency's programs. Additionally, as a means of assuring that Inspector General offices maintain the ability to function independently within the overall structure of their agencies, both the 1978 and 1988 legislation provided a direct semi-annual reporting structure for the Inspector General to the agency head and Congress, and allowed Inspectors General to perform a number of internal management functions, such as budget, personnel, and procurement, separately from the agencies' existing systems.

1/ Funding was included in the Office of Personnel Management, Salaries and Expenses appropriation.

The Office of Inspector General in OPM carries out its programmatic mandate in three principal operational areas:

Audits and Inspections of OPM Activities and Operations. OIG conducts a comprehensive program of audits and related analytical studies, designed and executed in accordance with applicable professional standards. In this regard, OIG assesses OPM's programs and nationwide operations from the following perspectives: 1) economy, efficiency, and compliance with law and regulations; 2) appropriate management and safeguarding of material and financial resources; and, 3) effectiveness in meeting objectives which are set by law or regulation, or in achieving internally-established performance measures. In addition, OIG reviews audit and audit-related functions which may be carried out by other OPM components.

Investigations: The Inspector General Act Amendments of 1988 (P.L. 100-504) and the Inspector General Act of 1978 (P.L. 95-452) confer on the Office of Inspector General broad authority to conduct investigations of wrongdoing, impropriety, and violations of law with respect to agency programs, in support of Federal law enforcement and prosecutorial entities. The Office of Inspector General carries out its investigative program through the following activities: 1) conduct of investigations of allegations of program-related fraud, misconduct, or conflict of interest by OPM employees or contractors; 2) investigation, in coordination and concert with law enforcement agencies, of suspected fraud on the part of participants and beneficiaries in OPM-administered retirement and insurance programs; and, 3) referral of cases for action by the Department of Justice or U.S. Attorneys, and the provision of support needed for successful prosecution.

Followup and Reporting: As required by OMB Circular A-50 and professional auditing standards, OIG monitors and follows up all of its audits and investigative projects to determine the disposition planned or taken by the agency in response to its findings and recommendations. This information, along with descriptions of the OIG's audit and investigative efforts and other program initiatives, are reported on a semi-annual basis to the Director, OPM, and the appropriate Congressional committees. The 1988 Amendments to the Inspector General Act expanded this role by establishing a highly detailed format for the accounting and reporting of the financial aspects of audit findings, and the decisions, actions, and recoveries or savings accomplished by management as a result of the Inspector General's recommendations.

Resource Changes

An increase of $530,000 and 4 FTE is requested to expand the criminal investigations function of the Office of the Inspector General to permit the development of a nationwide caseload involving instances of fraud in OPM-administered retirement and insurance programs. Expenditures through these programs by OPM to retirees, survivors, and insurance carriers are expected to exceed $49 billion in FY 1991. Approximately 2.7 million active employees, 2 million annuitants, and an estimated 4 million dependents receive insurance coverage and/or benefits payments from OPM's trust funds. If only half of one percent of such expenditures represented fraudulent transactions, there would be nearly $250 million in improper payments; similarly, if 1/10th of one percent of the program recipients were involved in improper claims activities, the potential annual caseload for the Office of Inspector General would exceed 8500. Based upon the experience of Offices of Inspector General in other Federal agencies which operate insurance and benefits programs, the actual rate of program fraud is likely to be much higher. As a practical matter, however, it is not feasible or cost-effective to investigate every instance of fraud. Thus, in order to achieve the maximum impact for its resources across this very large jurisdiction, OIG closely coordinates investigative activities with audit initiatives designed to identify, through statistical survey methodology and computer matches, claims and payments which display indicia of fraud or impropriety, and represent relatively large amount of Federal funds. The investigations program targets the most significant or egregious instances for active investigation to develop and refer cases to U.S. Attorneys for prosecution, or, if legal action is not forthcoming, to obtain refunds to the agency of amounts improperly paid.

An increase of $500,000 and 9 FTE is requested to strengthen the Office of Inspector General's capability to audit OPM's operation of retirement and insurance programs. These funds will support a systematic and comprehensive program of audits and related analytical studies of all activities through which OPM operates the Civil Service Retirement System, the Federal Employees Retirement System, and the Federal Employees Health Benefits Program and Federal Employees Group Life Insurance Program contracts. OPM projects that combined expenditures for all of these programs will exceed $49 billion in FY 1991.

With the inception of the statutory Office of Inspector General in April 1989, the costs and balances in OPM-administered trust funds, which exceed $250 billion, will be receiving increased scrutiny through independent professional audit oversight. OIG's studies to date have reflected that administrative practices and internal controls in these areas need to be strengthened, and, in many instances, may be inadequate to protect against fraud, waste, or improper use of funds. The requested resources will be used to increase the Office of Inspector General's presence in all areas of OPM's retirement and insurance programs, with ultimate goals of achieving oversight capability to 1) offer an independent opinion on the financial statements of the OPM-operated retirement and insurance programs, 2) establish an ongoing audit presence over the significant portions of the retirement program which is conducted offsite from OPM headquarters, 3) review health and life insurance contracting functions, which are not now operating on the basis of accepted business practices in the insurance industry, and 4) audit funds management practices in the insurance program, which have resulted in some $14 billion being placed in the hands of health insurance carriers without satisfactory controls or accountability.

An increase of $235,000 and 4 FTE is requested to support the Office of Inspector General's audit efforts with respect to OPM programs outside the retirement and insurance area. These funds will be used to meet significantly expanded responsibilities incident to audits of the agency's contracting activity, which has increased dramatically in recent years (over tenfold since 1985 in the case of the training development program). In many such instances, the Federal Acquisition Regulations require the contracting officer to seek our audit services on a preaward basis; for OIG this mandatory workload represents an increasingly significant aspect of the audit universe, and one which is essentially not subject to control. Other aspects of OPM activities which require a strengthened audit presence include the agency's financial management and budget systems, which are undergoing a long-delayed modernization, and information management programs which operate various governmentwide databases which contain extensive and sensitive data pertaining to Federal employees.

An increase of $210,000 in mandatory payments, primarily rent increases based on GSA rates and annualization of 1990 additional space holdings.

An increase of $168,000 as a result of a change in the Inspector General's share of overall OPM administrative support.

An increase of $85,000 for 50% funding of proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in nonsalary costs.

OFFICE OF THE INSPECTOR GENERAL

LIMITATION ON TRANSFERS FROM TRUST FUNDS

SUMMARY OF CHANGES

FY 1990 Total Obligations	$2,164,000
Program Changes	
Expansion of the trust fund audit program.	663,000
Costs of mandatory payments, primarily rent increases based on GSA rates and annualization of 1990 additional space holdings.	89,000
Increase to reflect change in the Inspector General's share of overall OPM administrative support.	85,000
Non-Program Changes	
Increase to fund 50% of the proposed 1991 General Schedule and executive pay raises, and 50% of expected inflation in nonsalary costs.	42,000
Total Change	879,000
FY 1991 Total Obligations	$3,043,000

OFFICE OF THE INSPECTOR GENERAL

LIMITATION ON TRANSFERS FROM TRUST FUNDS

(Transfer From Trust Funds)

	FY 1989 Actual 1/	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	---	27	36
Total Obligations	---	$2,164,000	$3,043,000
Workload Indicators			
Audit Reports Issued	---	55	65

Description of Programs

The Office of Personnel Management, under the Federal Employees Health Benefits Program (FEHBP), administers contracts with over 400 participating organizations, ranging from large nationwide insurance carriers such as Blue Cross/Blue Shield, to health maintenance organizations which may service a limited geographic area. The annual premium payments for these contracts will exceed $14.1 billion in FY 1991. Similarly, OPM administers contracts for life insurance coverage or Federal employees with a consortium of insurance firms under the Federal Employees Group Life Insurance (FEGLI) program, for which annual premium payments will exceed $1.2 billion in FY 1991.

OPM's Office of Inspector General audits these contracts, focusing upon the following factors: 1) whether charges made by carriers to FEHBP or FEGLI funds are allowable; 2) the effectiveness of internal administrative and management practices; 3) observance of appropriate and efficient claims processing practices; 4) use of internal control systems to avoid unnecessary or unwarranted expenditures; and 5) in the case of health maintenance organizations, a review of rate-setting methods to assure that the rates charged to FEHBP are comparable to those made available to other participants in the service area.

1/ Funding was included in the Office of Personnel Management, Limitation on Transfers from Trust Funds

Resource Changes

An increase of $663,000 and 9 FTE is requested to improve the quality, timeliness, and depth of the Office of Inspector General's audit coverage of insurance carriers and underwriters participating in the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance (FEGLI) program. Under their present configurations, the insurance programs present an audit universe of 463 separate plans and underwriters, which will receive estimated FY 1991 premium payments of $15.3 billion ($14.1 billion from FEHB, $1.2 billion from FEGLI).

OIG's goal is to provide audit coverage throughout this universe on a schedule which is both cost-effective, in terms of recovery of incorrect or improper charges to FEHB/FEGLI funds, and carries a deterrent or exemplary effect by encouraging compliance with all contractual provisions by the plans. The optimal configuration would provide for audit of each participating organization every three years. The minimally-acceptable level under generally accepted auditing standards would allow an audit of each plan every five years; inasmuch as the contractually-specified records retention period for FEHB carriers is five years, if a plan is not audited within that timeframe, OPM loses the ability to review and recover costs charged in earlier periods, even if they are clearly unjustified. As the result of resource shortages in prior years, many FEHB plans have not been audited within the records retention period, and some have gone as long as ten years without being audited.

The resource request for FY 1991 will permit staffing of the insurance audits program, and support of the extensive nationwide travel necessary to conduct work at the carriers' places of business, at a level which, if sustained, would provide for audit of each plan on a five-year cycle. Additionally, specialized staff will be added to lay the groundwork for the expansion of the Office of Inspector General's audits beyond financial management and claims processing into cost containment and medical necessity areas, which offer increased opportunities to identify savings or recoveries for the OPM trust funds.

An increase of $89,000 in mandatory payments, primarily rent increases based on GSA rates and annualization of 1990 additional space holdings.

An increase of $85,000 as a result of a change in the Inspector General's share of overall OPM administrative support.

An increase of $42,000 for 50% funding of proposed 1991 General Schedule and executive pay raises, and expected inflation in nonsalary costs.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
PROGRAM BY ACTIVITIES:			
Government Contribution for Annuitants Benefits (1959 law)	$2,429,659,000	$3,293,681,000	$3,892,436,000
Government Contribution for Annuitants Benefits (1960 act)	11,248,000	10,175,000	9,596,000
Administrative Expenses (1960 act)	177,000	208,000	218,000
TOTAL OBLIGATIONS	$2,441,084,000	$3,304,064,000	$3,902,250,000
BUDGET AUTHORITY	$2,374,414,000	$3,727,247,000	$3,509,563,000
OUTLAYS	$2,499,985,000	$2,989,215,000	$3,849,746,000

Note: FY 1991 estimates do not include the impact of proposed legislation which would reduce obligations, outlays and budget authority by $726,000,000.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

SUMMARY OF CHANGES

FY 1990 Total Obligations	$3,304,064,000
Program Changes	
This increment is required to finance the increase in premium rates anticipated for contract year 1991 and increase in the total number of annuitants covered under the Employees Health Benefits Program.	598,755,000
This reduction is associated with the lower number of annuitants covered under the Retired Employees Health Benefits Program.	-569,000
Total	598,186,000
FY 1991 Total Obligations	$3,902,250,000

Reduction in obligations of $726,000,000 resulting from proposed legislation not included in above amounts.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Employees Health Benefits	$2,429,659,000	$3,293,681,000	$3,892,436,000
Retired Employees Health Benefits	11,425,000	10,383,000	9,814,000
Total Obligations	$2,441,084,000	$3,304,064,000	$3,902,250,000

This appropriation funds the government's share of health benefits costs for annuitants and survivors who no longer have an agency to contribute the employer's share. The Office of Personnel Management requests the appropriation necessary to pay this contribution to the Employees Health Benefits Fund and the Retired Employees Health Benefits Fund. These trust revolving funds are available for: (1) the payment of subscription charges to approved carriers for the cost of health benefits protection; (2) contributions for qualified retired employees and survivors who carry private health insurance under the Retired Employees Health Benefits Program and (3) the payment of expenses incurred by the Office of Personnel Management in the administration of these programs.

Public Law 93-246, the Federal Employees Health Benefits - Government Contribution Increase Act, as modified by Public Law 101-76, provides for government contributions to enrollees in the Employees Health Benefits Program equal to 60 percent of the unweighted average of the high option premiums of six large plans. The total obligations for FY 1989 and FY 1990 reflect the use of payments made by the U.S. Postal Service to the Employees Health Benefits Fund to finance the cost of the government's contribution for annuitant's health benefits as provided in Public Law 100-203, the Omnibus Budget Reconciliation Act of 1987 ($160 million, FY 1989 and $270 million, FY 1990). In addition, Public Law 99-272, Consolidated Omnibus Budget Reconciliation Act of 1985, provides that the government contribution for health benefits for individuals who first become annuitants by reason of retirement from employment with the U.S. Postal Service on or after October 1, 1986 shall be paid by the U.S. Postal Service.

The requested increase of $598,755,000 in FY 1991 is necessary to provide for the growing number of enrollees and the estimated impact of premium increases effective in January 1991.

This appropriation also provides financing for the government's share of health benefit costs for annuitants and survivors covered under the Retired Employees Health Benefits Program. Public Law 96-156, the Retired Federal Employees Health Benefits Act - Government Contribution, provides for increased government contributions toward the subscription charge for health coverage, tied to increases in the cost of Part B (medical) of Medicare, for those annuitants who retired prior to July 1, 1960. The net impact of the increased rate of contributions for those enrolled with private insurance carriers and the decrease in the number of enrollees is a decrease in government costs of $569,000

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

Proposed for Later Transmittal

Total Obligations .... -$726,000,000

Proposed Legislation

The Administration is preparing a legislative package to eliminate the hidden subsidy provided to the Postal Service and District of Columbia government by assigning to those agencies the cost of providing health benefits for their employees and their survivors. Payments for health benefit costs of postal annuitants who retired after 1971 but before 1986 would be made by the Postal Service instead of OPM. The following presents a breakdown of the savings to the government payment account:

Eliminate Subsidies	
Postal Service	-$689,000,000
D.C. Government	- 37,000,000
Total	-$726,000,000

The appropriation could be affected by the Administration's proposal for reform of the Federal Employees Health Benefits program.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES LIFE INSURANCE

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
PROGRAM BY ACTIVITIES:			
Government Contribution for Annuitants Benefits	---	$ 2,462,000	$ 8,200,000
TOTAL OBLIGATIONS	---	$ 2,462,000	$ 8,200,000
BUDGET AUTHORITY	---	$ 2,662,000	$ 9,700,000
OUTLAYS	---	$ 2,071,000	$ 7,700,000

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES LIFE INSURANCE

SUMMARY OF CHANGES

FY 1990 Total Obligations	$2,462,000
Program Changes	
This increment is required to finance the government's share of premium payments for the growing population of annuitants retiring after December 31, 1989 who must contribute toward their post-retirement life insurance coverage until they reach age 65.	5,738,000
FY 1991 Total Obligations	$8,200,000

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES LIFE INSURANCE

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Total Obligations	---	$2,462,000	$8,200,000

Public Law 96-427, Federal Employees' Group Life Insurance Act of 1980, enacted October 10, 1980, requires that all employees under age 65 who separate for purposes of retirement on or after January 1, 1990, continue to make contributions toward their Basic life insurance coverage after retirement until they reach age 65. These retirees will contribute two-thirds of the cost of the Basic life insurance coverage (currently, $.401 per month for each $1,000 of coverage). As with active Federal employees, the government is required to contribute one-third of the cost of the premium (currently $.20 per month for each $1,000 of coverage) for Basic coverage. OPM, acting as the payroll office on behalf of Federal retirees, is requesting the funds necessary to make the required government contribution associated with annuitants' post-retirement basic life insurance coverage.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
PROGRAM BY ACTIVITIES:			
Payment of Annuities under Special Acts	$ 566,000	$ 589,000	$ 599,000
Payment of Government Share of Retirement Costs	4,858,102,000	5,211,143,000	5,666,506,000
Transfers for Interest on Unfunded Liability and Payment of Military Service Annuities	11,105,000,000	11,416,747,000	11,742,866,000
Spouse Equity Payment	30,300,000	40,000,000	42,000,000
Transfer for Payment of FERS Supplemental Liability	419,049,000	419,049,000	419,049,000
TOTAL OBLIGATIONS	$16,413,017,000	$17,087,528,000	$17,891,020,000
BUDGET AUTHORITY:			
Appropriation (current)	$ 4,858,668,000	$ 5,211,732,000	$ 5,687,105,000
Permanent Indefinite Authorization	11,554,349,000	11,875,796,000	12,203,915,000
TOTAL BUDGET AUTHORITY	$16,413,017,000	$17,087,528,000	$17,891,020,000
OUTLAYS	$16,413,017,000	$17,087,528,000	$17,891,020,000

Note: FY 1991 estimates do not include the impact of proposed legislation which would reduce obligations, budget authority, and outlays by $62,888,000.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

SUMMARY OF CHANGES

FY 1990 Total Obligations	$17,087,528,000
Program Changes	
Increase in payment for annuities under special acts.	10,000
Increase in 30-year amortization payments resulting from the FY 1991 pay raise.	475,363,000
Increase in the annual payment of interest on the Civil Service Retirement System unfunded liability due to the annuity roll growth and payment of the 4.7% January, 1990 COLA.	171,302,000
Increase in the annual payment for military service credit due to the annuity roll growth and payment of the 3.9% January, 1991 COLA.	154,817,000
Increase in annuities payable to former spouses under the Spouse Equity Act.	2,000,000
TOTAL CHANGES	$ 803,492,000
FY 1991 Total Obligations	$17,891,020,000

Reduction in obligations of $62,888,000 resulting from proposed legislation not included in above amounts.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Appropriation (Current)	$ 4,858,668,000	$ 5,211,732,000	$ 5,687,105,000
Permanent Indefinite Authorization	11,554,349,000	11,875,796,000	12,203,915,000
Total Obligations	$16,413,017,000	$17,087,528,000	$17,891,020,000

The Civil Service Retirement and Disability Fund was established in 1920 to administer the financing and payment of annuities to retired Federal employees and their survivors. In FY 1991 the Fund will serve approximately 2.9 million active employees, 1.7 million annuitants and 0.6 million survivors and will make benefit payments in excess of $34 billion. The Fund covers the operation of both the Civil Service Retirement System and the Federal Employees Retirement System.

The Payment to the Civil Service Retirement and Disability Fund consists of an appropriation and a permanent indefinite authorization to pay the government's share of retirement costs as defined in the Civil Service Retirement Amendments of 1969 (Public Law 91-93), the Federal Employees' Retirement System Act of 1986 (Public Law 99-335) and the Civil Service Retirement Spouse Equity Act of 1985 (Public Law 98-615). The payment is made directly from the General Fund of the U.S. Treasury and is in addition to appropriated funds that will be contributed from agency budgets in FY 1991.

Current Appropriation

Public Law 91-93 provides for an annual appropriation to amortize, over a 30-year period, all increases in Civil Service Retirement System (CSRS) costs resulting from Acts of Congress granting new or liberalized benefits, extensions of coverage, or pay raises, exclusive of the effects of cost-of-living adjustments. The total current appropriation request for FY 1991 ($5,687,105,000) is the sum of the annual payments authorized since the law was enacted in 1969 ($5,686,506,000) plus funding for the annuities of persons employed on the construction of the Panama Canal and widows of former Lighthouse Service ($599,000) (Annuitants under Special Acts). The total FY 1991 current appropriation request represents an increase of $475,373,000 from the amount requested for FY 1990 of which $475,363,000 is attributed to increases in employees' pay and $10,000 for increases in payments to annuitants under special acts.

Permanent Indefinite Authorization

Public Law 91-93 also provides permanent indefinite authorization for the Secretary of the Treasury to transfer, on an annual basis, an amount equal to 5 percent interest on the Civil Service Retirement System's statutory current unfunded liability, calculated based on static economic assumptions of $9,121,301,000 and annuity disbursements attributable to credit for military service of $2,621,564,000.

The permanent indefinite authorization in FY 1991 will also include the third of 30 annual payments of $419,049,000 authorized by Public Law 99-335 to amortize the supplemental liability of the Federal Employees Retirement System (FERS).

It also includes a payment of $42,000,000 in accordance with Public Law 98-615 which provides for the Secretary of the Treasury to transfer an amount equal to the annuities granted to eligible former spouses of annuitants who died between September 1978 and May 1985 and who did not elect survivor coverage.

The permanent indefinite authorization in FY 1991 will total $12,203,915,000, an increase of $328,119,000 from FY 1990. The increase reflects a higher CSRS unfunded liability interest payment of $171,302,000, a higher payment for military service credit of $154,817,000, and a higher payment for Spouse Equity annuities of $2,000,000.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Proposed for Later Transmittal

Total Obligations .... -$62,888,000

Proposed Legislation

The Administration proposes to (1) eliminate the January 1991 cost-of-living adjustment (COLA) for all annuitants except those who are permanently disabled; (2) effect, beginning in 1992, a modified COLA for CSRS annuitants whereby Consumer Prince Index (CPI) increases up to 2 percent would be fully matched, those between 2 and 3 percent would result in a 2 percent COLA and those at 3 percent or more would result in a COLA equalling the change in CPI minus 1 percent; (3) eliminate the alternative annuity provision of the current law which allows for the election of a lump sum payment of employee contributions; and (4) increase Postal Service and District of Columbia government employer contributions to cover the additional cost of COLA's granted to Postal and District of Columbia government annuitants. These proposals will decrease the payment to the CSRDF fund by $62,888,000 since lower annuity disbursements and increased revenues will reduce the unfunded liability and its related interest payment.

REVOLVING FUND

COMPARATIVE SUMMARY STATEMENT

	FY 1989 Actual		FY 1990 Estimate		FY 1991 Estimate	
	Full-time Equivalents	Amount	Full-Time Equivalents	Amount	Full-Time Equivalents	Amount
PROGRAM BY ACTIVITIES:						
Employee Development	390	$ 94,219,000	370	$102,866,000	370	$105,884,000
DOD Testing	341	8,728,000	268	8,610,000	268	8,836,000
Investigations	1,158	71,306,000	1,208	81,403,000	1,208	86,754,000
Other Programs	9	1,913,000	10	2,496,000	10	2,455,000
TOTAL FTES AND OBLIGATIONS	1,898	$176,166,000	1,856	$195,375,000	1,856	$203,929,000
BUDGET AUTHORITY		---		---		---
OUTLAYS		$ -6,370,000	---	$-11,688,000	---	$ -2,346,000

REVOLVING FUND

SUMMARY OF CHANGES

FY 1990 Total Obligations		$195,375,000
Program Changes		
Employee Development:	Increase to expand training management assistance program to regional offices.	1,748,000
Investigations:	Increase for new computer for Personnel Investigations Processing System.	2,300,000
Other Programs:	Decrease in startup expenses for Federal Quality Institute (-$73,000) and building maintenance (-$37,000).	-110,000
Mandatory Payments:	Increases for rent and other costs offset by decrease for long-distance telephone service.	219,000
Non-Program Changes		
All Activities:	Increase for proposed 1991 General Schedule and executive pay raises, and expected inflation in nonsalary costs.	3,409,000
	Increase to reflect change in Revolving Fund share of overall administrative, executive and ADP support services.	988,000
	TOTAL	8,554,000
FY 1991 Total Obligations		$203,929,000

REVOLVING FUND

Description of Fund

Under authority of 5 U.S.C. 1304, public laws and Executive orders, the Revolving Fund of the Office of Personnel Management provides financing on a reimbursable basis for a continuing cycle of services, primarily to other Federal agencies. These services include: employee development, including training for Federal employees and executives and training management assistance; testing of potential military inductees for the Department of Defense in those locations where it is more cost-effective for OPM to do so than DOD; background security investigations of individuals who are candidates for positions identified as critical-sensitive by the requesting agencies or reinvestigations of individuals occupying positions identified as critical sensitive; a temporary assignment pool (TAP) of senior executives; coordination and development of the Presidential Management Intern Program (PMIP), operation of the Federal Quality Institute and collection of fees in support of the Executive Exchange program. Each program is operated at rates, established by OPM, which are deemed adequate to recover expenses over a reasonable period of time. Receipts derived from operations are, by law, available in their entirety for use by the fund without further action by Congress. Excess earnings, as determined by OPM, are deposited into miscellaneous receipts of the Treasury.

EMPLOYEE DEVELOPMENT

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirement			
Full-Time Equivalents	390	370	370
Total Obligations	$94,219,000	$102,866,000	$105,884,000
Workload Indicators			
Participant Training Days	507,643	504,064	479,264

Description of Program

The mission of the Employee and Executive Development program is to enhance employee training and development to assure that employee skill and knowledge levels meet emerging job requirements and the long term needs of the Federal Government.

Training delivery: Develops, updates, and delivers interagency training courses for Federal employees in the subject areas of personnel management; labor-management and employee relations; executive, management and supervisory development; front-line service support; and Administration priority areas. This training is aimed at improving the skills and knowledge of employees in the career fields represented in the broad training curriculum areas.

The 25,000 participant training day decrease in training production is a result of a planned shifting of focus from certain areas of classroom training into higher priority areas such as personnel and management development programs.

Training Management Assistance: Provides training management assistance to agencies to help improve the management and administration of their internal training programs. This assistance is provided through expert private sector firms under contract with OPM and with OPM staff oversight of contractor performance.

Resource Changes

An increase of $1,748,000 to expand training management assistance to OPM's regional offices.

An increase of $623,000 for General Schedule and executive pay raises and inflation in non-salary costs.

An increase of $445,000 resulting from changes in this program's share of overall internal administrative, executive, and ADP support.

An increase of $202,000 in mandatory payments, which includes rent increases based on GSA rates and annualization of 1990 additional space holdings, a decrease attributable to savings in long distance telephone service with full implementation of FTS 2000, and a net increase for all other costs.

DOD TESTING

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalents	341	268	268
Total Obligations	$8,728,000	$8,610,000	$8,836,000
Workload Indicators			
Testing Sessions for Prospective Inductees	79,970	80,000	80,000

Description of Programs

The Office of Personnel Management conducts Armed Services Vocational Aptitude Battery (ASVAB) tests for the Department of Defense (DOD) in support of the armed forces recruitment efforts. This program improves support to recruiters, enables military personnel to perform regular duties rather than requiring special reassignments to accomplish testing duties, improves test security and integrity and increases the retention and proficiency of OPM test examiners. DOD has concluded that the government's total cost for administering these tests is reduced by using OPM personnel.

Resource Changes

An Increase of $226,000 for General Schedule and executive pay raises and inflation in non-salary costs.

INVESTIGATIONS

	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Resource Requirements			
Full-Time Equivalent	1,158	1,208	1,208
Total Obligation	$71,306,000	$81,403,000	$86,754,000
Workload Indicators			
Background Investigations	45,407	65,000	65,000

Description of Program

The Investigations program conducts background investigations of applicants or appointees to Federal positions and contract employees under authority in Executive Order 10450, as amended, and various acts of Congress. The background investigation is based on information from checks with certain Federal records and in-depth interviews with individuals familiar with the subject's character, conduct and loyalty to the United States.

The various types of investigations include: (1) Minimum Background Investigations (with telephone follow-up made required if written inquiries are not returned to ensure proper coverage) which consist of the National Agency Check and Inquiries investigations as well as a credit search; (2) Limited Background Investigations which consist of the National Agency Check investigations along with a subject interview, personal interviews with selected sources covering specific areas of the subject interview, personal interviews with selected sources covering specific areas of the subject's background during the past 3 years, and written inquiries, record searches and credit searches for a total of 5 years and; (3) Background Investigations which consist of the National Agency Check investigations along with a subject interview plus personal interviews conducted by OPM investigators covering all activities in the subject's past 5 years (employment, education and residence) including references, law enforcement and credit checks. Periods of time beyond 5 years may be covered to resolve significant issues. OPM does not do revolving fund background investigations for DOD; (4) Special Background Investigations which consist of the National Agency Check investigations plus personal interviews conducted by OPM investigators covering all activities in the subject's past 15 years (employment, education and residence) including references, law enforcement and credit checks. Many of these are conducted on individuals requiring special CIA coverage.

Resource Changes

An increase of $2,300,000 to a purchase a new computer for the Personnel Investigations Processing System (PIPS). The computer will expand PIPS capacity and improve processing.

An increase of $2,514,000 for increases in salary and benefit costs including General Schedule and executive pay raises, and inflation in non-salary costs.

An increase of $543,000 resulting from changes in this program's share of overall internal administrative, executive, and ADP support.

An decrease of $6,000 in mandatory payments, which includes rent increases based on GSA rates and annualization of 1990 additional space holdings, a decrease attributable to savings in long distance telephone service with full implementation of FTS 2000, and a net increase for all other costs.

OTHER PROGRAMS

RESOURCE REQUIREMENTS	FY 1989 Actual	FY 1990 Estimate	FY 1991 Estimate
Full-Time Equivalents	9	10	10
Total Obligations	$1,913,000	$2,496,000	$2,455,000

Description of Programs

PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE: The President's Commission on Executive Exchange collects participant fees to help defray the cost of training, seminars and certain administrative expenses necessary to the operation of a successful exchange program for selected executives, scientists and engineers.

PRESIDENTIAL MANAGEMENT INTERN PROGRAM: The Presidential Management Intern Program recruits, selects, places and trains outstanding college graduates with advanced degrees who have high potential as future government managers. Interns are hired by executive agencies for two year developmental assignments. Agencies reimburse OPM for career development and training costs of participants.

TEMPORARY ASSIGNMENT POOL: The Temporary Assignment Pool reassigns members of the Senior Executive Service to temporary positions in agencies that request short term assistance to resolve policy and management issues. Agencies reimburse OPM for the salaries of the executives.

FEDERAL QUALITY INSTITUTE: The Federal Quality Institute was created to raise the awareness of the principles and techniques of Total Quality Management (TQM) among Federal managers and help executives implement TQM in their organizations. TQM is a management approach that relies on well-established principles and taps the creativity of all employees responsible for quality products and services.

Resource Changes

A decrease of $37,000 in building maintenance costs funded through OPM's Revolving Fund. All building maintenance costs are now funded through a direct transfer fund GSA's Federal Building Fund.

A decrease of $4,000 which includes an increase of $46,000 for pay and benefits for the Personnel Management Intern Program, the Temporary Assignment Pool, and the Federal Quality Institute: an increase of $23,000 in mandatory payments for FQI; offset by a decrease of $73,000 in startup expenses for FQI.

WITNESSES

	Page
Aikens, J. D	503
Armendariz, Tony	273
Boggs, Hon. Lindy	193
Bowie, W. B	461
Breger, M. J	79
Caldwell, W. E	353
Campbell, D. E	635
Casazza, C. S	461
Conklin, P. J	653
Davis, F. G	635
Duggan, M. L	23
Edles, G. J	79
Elliott, L. A	503
Jennings, M. L	409
Johnson, M. L	409
Kincaid, John	569
Koch, K. D	273
Lafferty, Linda	273
Lammon, R. E	635
Levinson, D. R	409
Lubbers, J. S	79
McDonnell, Erin	353
McGarry, J. W	503
McKee, Jean	273
Megronigle, J. C	193
Milkman, B. L	1
Myers, L. F	409
Nething, D. E	569
Newman, C. B	653
Nims, A. L., III	461
Olmstead, W. J	79
Smoke, D. B	461
Steinko, F. A., Jr	569
Talkin, Pamela	273
Tanner, L. D	23
Weiher, C. J	193
Wieseman, M. F	353
Wilson, Dr. D. W	193
Young, J. C	1

INDEX

Administrative Conference of the United States

Page

Administrative Process ... 137

Agencies Initiation of Projects with Conference Appendices to Written Testimony ... 145

Budget Justification ... 146

Conference Initiatives Affect Millions ... 136

Conference Process for Selection of Research Topics ... 144

Conference Research Agenda ... 141

Conference's Role ... 135

Conference Themes ... 136

Ensuring Government Integrity ... 136

Federal Grievance Procedures ... 142

Funds for Research ... 137

Immigration Problems ... 138

Pending Research Projects ... 184

Priority Research Items ... 144

Rationalizing the Process ... 135

Reducing Litigation Overload in the Administrative Process ... 135

Request for FY 1991 ... 137

Role of OMB ... 140

Transcript of Appropriations Hearing ... 135

Written Testimony of Chairman Breger, Submitted for the Record ... 80

The Advisory Commission on Intergovernmental Relations

Automation ... 581

Budget Justification ... 583

Commission, The ... 578

Contracts ... 581

Cooperative Projects ... 569

Cost-Cutting Compliance ... 570

Federalism Overview ... 569

FY 1991 Request ... 571

Member Selection ... 580

Outside Income ... 577

Product Sales ... 579

Project Selection ... 580

Research Program ... 570

Sequestration ... 578

State ACIRs ... 579

Testimony of David E. Nething, Member, U.S. Advisory Commission on Intergovernmental Relations ... 572

Witnesses ... 569

Advisory Committee on Federal Pay

Page
Advisory Committee to Testify on Pay Reform 70
Annual Estimate of Appropriation, Fiscal Year 1991 74
Benefit Comparison 68
Comparing Federal and Non-Federal Pay 67
Congressional Staff Salaries 69
Fiscal year 1991 Budget Request 66
Locality Pay 67
Locality Pay Areas for Consideration 71
Pay Gap 69
Recruitment and Retention Problems 68
Response to Questions Submitted by Representative Daniel K. Akaka 72
Summary of 1989 Report 66
Testimony of Martin L. Duggan, Chairman, on Fiscal Year 1991 Budget Request, House Appropriations Committee, Subcommittee on Treasury, Postal Service and General Government, March 14, 1990 24
The Advisory Committee and the Administration's Pay Bill 71
The Bottom Line on Federal Pay—The Gap Became a Canyon, Annual Report of the Advisory Committee on Federal Pay, August 1989 30

Committee for Purchase From the Blind and Other Severely Handicapped

Accreditation Agencies 12
Committee Leadership Change 6
Committee Policy on Accreditation 13
Description of JWOD Program 6
Educating Federal Consumers 8
Fair Market Prices 9
FY 1989 Performance 7
FY 1990 and 1991 Budgets 10
FY 1991 Appropriations Request 8
Increase in the Number of Workshops 14
JWOD Commodities and Services 9
JWOD Program Needs 6
JWOD Sales 9
Participating Workshops 10
Prepared Statement 2
Promotion of Persons With Disabilities 11
Workshop Inspections 14

Federal Election Commission

Contributions by Foreign Nationals 533
Democratic Reforms in Eastern Europe 522, 525, 527, 534
FY 1991 Budget Request 503, 521, 535, 540
Indpendent Expenditure 522, 530
Introduction of Associates 503
Presidential Election Campaign Fund 523, 528, 536
Representational Funds 526, 532
Staffing 530
Summary of Differences from 1990 538
Testimony 504
Witnesses 503

Federal Labor Relations Authority

Page
Administrative Law Judges 294
Arbitration Cases 288
Educational Services 292
Introductions 273
Judicial Review 290
Jurisdiction 288
Reduction In Backlog 291
Relationship Between Authority and General Counsel 293
Relationship with Merit Systems Protection Board 287
Sources and Qualifications of Arbitrators 291

National Archives and Records Administration

1920 Population Census 212
Archives II Facility 209, 224
Consolidation of Records at the Archives II Facility 214
Electronic Records 211, 218
FY 1991 Increase 212
Grants Request 203
Grants to States 203
Hispanic History Documentation 223
Library Admission Fees 215, 217
Library Reproduction Fees 217
Maryland University Cooperation Concerning Archives II Facility 218
National Historical Publications and Records Commission 193, 211
Opening Remarks (of Mr. Roybal) 193
Opening Statement of Don W. Wilson (submitted) 205
Opening Statement (of Dr. Wilson) 204
Operational Funding of Archives II Facility 214
Other Increases 211
Other Increases/Decreases 212
Pay Raise Absorption 212
Preservation 222
Presidential Libraries 214
Presidential Library Statistics 215
Questions Submitted by Mr. Akaka 228
Questions Submitted by Mr. Hoyer 225
Reagan Library 215
Records Housed at Archives II Facility 213
Roosevelt Library 212
Statement of Ms. Boggs (submitted) 194
Witnesses 193
World War II Commemoration 220

Office of Government Ethics

Additional Responsibilities 639
Agency Responsibilities 641
Appointee Certifications 643
Budge Amendment 640
Current Staffing 643
Definition of Performance 641
Effective Ethics Program 644
Enforcement Power 643

Page
Ethics Training 645
Funding Ceiling 639
Informal Advisory Letters and Memoranda 642
Justification of Personnel 640
Prevailing Environment 639

Office of Personnel Managment

Annuitant Health Benefits 689, 714
Annuitant Life Insurance 688
Appropriations Freeze 707
Appropriations Request 654
Audits 680
Budget Proposals—FEHB 687
Budget Proposals on Personnel 653
Civil Service Retirement Fund 688
Civil Service Testing 668
Cost-of-Living Allowances 683, 727
Criminal Investigations 680
Drug Testing 692, 718
Effect of Budget Cuts 684
Employment Testing 700
Entry Level Pay 666
Federal Employees Health Benefits Program (FEHBP) 745
Federal Employees Health Benefits Reform Proposal 753
Federal Pay 694, 719
Foreign Language Bonuses 743
Geographic Differences 667
Inspector General 673, 746
Job Sharing 671, 673
Law Enforcement Officer Statistics 761
Locality Pay 726
Locality Pay Adjustments 740
Locality Pay vs. COLA 684
OPM Congressional Budget Justification 762
Pay Comparability Adjustments 1971-1989 752
Pay In Washington, D.C 669
Pay Reform 666
Placement of Aetna Enrollees 672
Retirees' Life Insurance 712
Retirement Cost-of-Living Adjustments (COLA's) 744
Retirement Funding 709
Retirement Processing Delays 704, 735
Retirement Processing Times 687, 760
Special Salary Rates 698
Staffing 699
Statement of Honorable Constance Berry Newman 656
Statement of Patrick J. Conklin, Inspector General 675
Trust Fund Administrative Expenses 701

Office of Special Counsel

Appeal Rights 373
Hatch Act 377
Individual Right of Action 359

Page
Justifications 396
OSC Authority 377
OSC Budget Request 359
OSC Hotline 377
OSC Personnel Requests 375
OSC Workload 374
Prohibited Personnel Practices 360
Statement of Mary F. Wieseman 354

United States Tax Court

Automation 478
Budget increase 476
Budget justification 482
Case inventory 474, 476
Caseload and backlog 480
Chiller system 472
Frivolous filings 480
IRS abuse compliants 469
Judicial and executive pay raise 474
Opening statement 461
Prepared statement 462
Rent increase 472
Tax Reform Act of 1986 480

U.S. Merit Systems Protection Board

Appeal Rights 417
Base Closings 426
Board Jurisdiction 421
Board Review Procedures 420
Budget Justification 429
Budget Request 426
Caseload 421
Court Review 425
MSPB Jurisdiction 417
Merit System Studies 422
Opening Remarks 409
Opening Statement 411
Pending Cases 422
Success Rates Before the Board 418
Voluntary Settlements 425
Whistleblower Protection Act Cases 424
Whistleblower Protection Act Voluntary Settlements 424